TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 138.

SUSAN A. RAMSAY, PLAINTIFF IN ERROR,

vs.

THE TACOMA LAND COMPANY AND PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY AND JOHN C. BULLITT, TRUSTEES OF THE ESTATE OF CHARLES B. WRIGHT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED NOVEMBER 9, 1904.

(19,129.)

(19,129.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 138.

SUSAN A. RAMSAY, PLAINTIFF IN ERROR,

vs.

THE TACOMA LAND COMPANY AND PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY AND JOHN C. BULLITT, TRUSTEES OF THE ESTATE OF CHARLES B. WRIGHT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

INDEX.

	Original.	Print.
Filing in supreme court	*a*	1
Transcript from superior court	1	1
Amended complaint	1	1
Exhibit A—Letter of Commissioner of General Land Office to the register and receiver at Olympia, Washington, September 26, 1899	17	16
B—Letter of Acting Secretary of Interior to Commissioner of General Land Office, July 10, 1900	21	21
Letter of Secretary of Interior to Commissioner General Land Office, Sept. 25, 1900	25	25
Letter of Commissioner of General Land Office to register and receiver at Olympia, Washington, October 4, 1900	26	26

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 8, 1904.

	Original.	Print
Demurrer to amended complaint	27	27
Order overruling demurrer	29	28
Answer	30	28
Reply	38	34
Findings of fact and conclusions of law proposed by defendants	40	36
Conclusions of law requested by defendants	42	38
Findings of fact and conclusions of law	46	40
Order of dismissal as to Aldrich, receiver	54	46
Judgment and decree	55	47
Notice of appeal	58	48
Bond on appeal	59	49
Clerk's certificate	61	50
Affidavit of E. R. York	62	50
Bill of exceptions	63	51
Demurrer	63	51
Ruling on demurrer	63	51
Offers of evidence	64	52
Defendants' requests for findings	64	52
Defendants' requests for conclusions of law	66	53
Judge's allowance of bill of exceptions	69	55
Judge's certificate to bill of exceptions	70	56
Opinion	71	57
Judgment	75	60
Petition for writ of error	76	61
Order allowing writ of error	77	62
Bond for writ of error	78	62
Assignment of errors	80	64
Original writ of error	82	65
Original citation and service	83	66
Clerk's certificate	84	67

a 45321/2.

Filed Dec. 23, 1902.

C. S. REINHART, *Clerk.*
F. S. GUYOT, *Dep.*

Filed in superior court Oct. 22, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

Entered App. Doc. No. —, page —.

1 In the Superior Court of the State of Washington in and for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff, *vs.* TACOMA LAND COMPANY, a Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustee, &c., for the Estate of Charles B. Wright, Deceased, and Frank J. Aldrich, Receiver of the Tacoma National Bank, Defendants.	Cause No. 18901. Amended Complaint.

Plaintiff complains of the defendants and alleges:

I.

That the Tacoma Land Company is a corporation duly incorporated and existing under the laws of the State of Pennsylvania.

II.

That the Philadelphia Trust, Safe Deposit and Insurance Company is a corporation duly organized and existing under the laws of the State of Pennsylvania.

III.

That on the 23rd day of March, 1898, Charles B. Wright, died in the city of Philadelphia, State of Pennsylvania, and by his last will made the Philadelphia Trust Safe Deposit and Insurance Company of the City of Philadelphia, and John C. Bullitt of said city of Philadelphia his executors and trustees.

IV.

That Frank Aldrich is the duly appointed and acting receiver of the Tacoma National Bank of Tacoma.

V.

2 That on the 24th day of February, 1897, Susan A. Ramsey was a citizen of the United States over the age of twenty-one years and an unmarried woman, residing in the State of Washington and was in every respect duly qualified as such citizen to take, enter and settle upon, improve and acquire title to public lands of the United States under and by virtue of the homestead laws; that is to say, under and by virtue of the act of Congress of May 20th, 1822, as set forth in sections 2289 and 2317 inclusive, of the Revised Statutes of the United States and the acts amendatory thereof.

VI.

That on said 24th day of February 1897, being such resident and so qualified as aforesaid, the said Susan A. Ramsey entered upon the south west quarter of the northwest quarter of section three (3) township twenty (20) north, range two (2) east of Pierce county State of Washington, at the district land office in Olympia, Washington, in due form under the aforesaid homestead laws of the United States, by then and there filing in said district land office her homestead application, accompanied by homestead and non-mineral affidavits, that the plaintiff then and there paid to the receiver of said land office eight dollars ($8.00) the fees therefor, and received from the receiver of said United States land office a certificate of entry which is in the words and figures following, to-wit:

"Receiver's receipt No. 1885. Application No. 1885.

Duplicate.

Homestead.

"RECEIVER'S OFFICE, OLYMPIA, WASH., *Feb.* 24, 1897.

Received of Susan A. Ramsey the sum of eight dollars — cents, being the amount of fee and compensation of register and receiver for the entry of S. W. ¼ N. W. ¼ of section 3, in township 20, north of range 2 east, under section 2290, Revised Statutes of the United States. 40. $2.50

$8.

EDWARD K. HAWKINS, *Receiver.*"

VII.

That thereafter, to-wit: on the 31st day of May, 1897, plaintiff moved upon and began her actual residence upon said land, and

ever since has and now resides upon and cultivates said land
3 for her own exclusive benefit and not directly, or indirectly, for the use or benefit of any other person or persons whomsoever, and that she has not heretofore had the benefit of the homestead laws; that said land was not mineral land, or any portion thereof, or in any reservation or used in any way for trade or business, but was strictly agricultural land.

VIII.

That on the 25th day of April, 1901, plaintiff appeared at the United States land office at Olympia, and made and filed therein her notice of her intention to make final proof of her residence upon, and cultivation of said land. That said land office refused to act upon said notice or to receive said proof for the reason that the homestead entry of plaintiff was cancelled October 30th, 1900.

IX.

That notwithstanding the aforesaid refusal of said land office to receive said proof of plaintiff, — then offered to the receiver of said land office proof of her continuous residence upon said land and cultivation thereof for more than fourteen months last past, which proof was in the usual form of homestead proof and consisted of her affidavit and that of two disinterested citizens of the United States competent to be such witnesses, sworn to before M. L. Clifford, United States commissioner, that plaintiff also tendered to the register and receiver of said land office, with such homestead proof, one hundred dollars ($100) the Government fee for said land, and the further sum of one and 35/100 ($1.35) dollars, the fees of said register and receiver.

X.

That the aforesaid proof and sums of one hundred dollars ($100.00) and one and 35/100 dollars, as tendered were refused by said register and receiver of said land office for the reason that plaintiff's homestead entry was cancelled by General Land Office letter of October 30th. 1900, and that said land had been patented to the Tacoma Land Company.

4 XI.

That while plaintiff was upon said land and in possession of the same, the Tacoma Land Company, claiming to be the grantee and *bona fide* purchaser of said land from the Northern Pacific Railroad Company, applied to purchase the above described land under section V of the act of Congress approved March 3d, 1887, which application was in the following form, to-wit:

"In the district land office at Olympia, Washington.

AUGUST —, 1897.

The undersigned, the Tacoma Land Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and having its principal place of business in the city of Tacoma, in Pierce county, Washington.

Hereby makes application to purchase under section 5 of the act of Congress, approved March 3rd, 1887, relating to the adjustment of railroad grants, upon the payment to the United States of the ordinary Government price at the rate of two dollars and fifty cents ($2.50) per acre, the following land situated in Pierce county, State of Washington, to-wit:

The southwest quarter of the northwest quarter (S. W. ¼ of N. W. ¼) of section three (3) township twenty (20) north of range two (2) east of the Willamette meridian.

The said Tacoma Land Company claims the right to purchase the said land under section aforesaid of said statute as the *bona fide* grantee and purchaser from the Northern Pacific Railroad Company; the said lands having been purchased in good faith from said railroad company by said Tacoma Land Company, prior to the determination by the Department of the Interior that said lands were excepted from the grant of said railroad.

The names of witnesses by whom the undersigned claimant will make its proof as required by law and practice of the department are George Ladd Munn, Thomas Cooper, G. G. Rowe and John R. Arkley.

TACOMA LAND CO.,
By ISAAC W. ANDERSON,
General Manager."

XII.

Plaintiff filed protest in the United States land office in words and figures following:

"In the United States land office at Olympia, Washington.

"In the Matter of the Application of the Tacoma Land Company's Purchase of the S. W. ¼ of the N. W. ¼, Section 3, Township 20 N., R. 2 E., W. M.

To the honorable register and receiver:

I, Susan A. Ramsey, do hereby protest against the allowance of the application of the Tacoma Land Company by Isaac W. Anderson, general manager, to purchase said land under the act of March 3d, 1887 (24 Stat. 556) and allege that the facts set forth in said petition do not entitle the said Tacoma Land Company to purchase said land.

5

II.

Said Susan A. Ramsey further protests against the allowance of said company's application to purchase, for the reason that it had notice at the time it purchased said land from the Northern Pacific Railroad Company, that the same was covered with the pre-emption filing of C. W. Kincade, filed the 19th day of May, 1869, and that said land was not subject to any right or claim of the Northern Pacific Railroad Company.

III.

Said Susan A. Ramsey hereby further protests against the allowance of company's application to purchase for the reason that said Tacoma Land Company has conveyed away all title it ever acquired from the Northern Pacific Railroad Company and that it now has no right nor claim whatsoever to said land or any part thereof.

IV.

Said Susan A. Ramsey further protests against said company's application to purchase for the reason that it purchased said land from the Northern Pacific Railroad Company subsequent to the act of March 3d, 1887.

V.

Said Susan A. Ramsey hereby further protests against the allowance of said Tacoma Land Company's application to purchase said land and alleges the facts to be that on or about the 24th day of February 1897, protestant presented her homestead application No. 1885, accompanied with her non-mineral affidavit and homestead affidavit duly sworn to at the land office at Olympia, Washington, which application was accepted by the register and receiver of said land office and said protestant then and there paid to the receiver of said land office the legal fees therefore and has since said filing placed on said land improvements of the value of $1200.00 and on the 31st day of May, 1897, she began residing on said land and has ever since and now resides upon said land.

Wherefore protestant prays that a hearing be granted and that the petition of said Tacoma Land Company be denied.

SUSAN A. RAMSEY.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Susan A. Ramsey being first duly sworn on her oath deposes and says: That she is the protestant named in the foregoing protest, that she has read the above and foregoing protest knows the contents thereof, and that the same is true as she verily believes.

SUSAN A. RAMSEY.

Subscribed and sworn to before me this 11th day of October, A. D. 1897.

E. E. BAIR,
Notary Public in and for the State of Washington,
Residing at Tacoma, Pierce Co., Wash.

C. W. CORLISS,
Attorney for Protestant.

Address ——."

XIII.

That thereafter, and towit: on the 11th day of October, 1897, while plaintiff was in possession of said land and occupying the same as her homestead under her homestead filing No. 1885, the defendant The Tacoma Land Company, M. L. Clifford a United States commissioner at Tacoma, Washington, made and filed the following affidavits in support of its application, towit:

6 "In the United States land office at Olympia, Washington.

STATE OF WASHINGTON, } ss:
County of Pierce, }

OCTOBER 11TH, 1897.

I, Isaac W. Anderson, being first duly sworn according to law, depose and say, that I am the general manager of the Tacoma Land Company, a corporation, applicant to purchase, under section 5 of the act of Congress approved March 3rd, 1887, relating to the adjustment of railroad grants, the following described land situate in Pierce county, State of Washington, to-wit:

The southwest quarter of the northwest quarter (S. W. ¼ of N. W. ¼ of section three (3) township twenty (20) north of range two (2) east of the Willamette meridian.

That said applicant claims the right to purchase the said land as the *bona fide* grantee and purchaser thereof of the Northern Pacific Railroad Company which said railroad company at the time of said purchase, claimed said land under its grant from the United States.

I.

That the said tract of land above described is of the numbered sections described by the grant made by Congress in aid of said railroad.

II.

That the said tract is opposite and co-termin-us with that portion of the road of said railroad extending from Portland, Oregon, to Tacoma, Washington; the grant for the construction of which was made by the joint resolution of May 31st, 1870. That said land is

within the primary limits of said railroad grant. That the map of definite location of the railroad opposite the said land was filed on May 14th 1874.

III.

That said land was sold by said railroad company to the said applicant, The Tacoma Land Company, as a part of its said railroad grant.

IV.

That said land was excepted from the portion of the grant of the United States to said railroad company as determined by the Secretary of the Interior in his letter and decision directed to the Commissioner of the General Land Office, in the matter of the contest of Corliss *vs.* Northern Pacific Railroad Company, dated July 13, 1896, and as finally settled by the closing of the case of said contest by the General Land Office on the 13th day of October, 1896.

V.

That at the date of said sale to said applicant, said land was not in the *bona fide* occupancy of any adverse claimants under the preemption or homestead laws of the United States, whose claims and occupancy have not since been voluntarily abandoned.

VI.

That said land was not settled upon subsequent to the first day of December, 1882, and prior to March 3rd, 1887, by any person or persons claiming, the right to enter the said land under the settlement laws of the United States.

VIII.

That the applicant, The Tacoma Land Company, is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business in the city of Tacoma, and State of Washington, that said applicant claims all rights, granted by said section 5 of the said act of Congress, approved March 3rd, 1887, to citizens of the United
7 States under authority of the decisions of the Secretary of the Interior in the case of Gasper *et al.*, *vs.* St. Louis River Water Power Company, made May 14th, 1896. That the said applicant, The Tacoma Land Company on the 30 day of Dec. 1870, purchased the said land from the Northern Pacific Railroad Company and paid therefor the sum of — dollars. That said lands were purchased in good faith by said applicant, prior to the determination by the Department of the Interior that said lands were excepted from the grant of said railroad and relying upon the representations made by said railroad company that said lands were a part of its said grant.

That the copy of deed hereto attached and made a part of this affidavit, is a true and correct copy of the deed of conveyance made by said railroad company to the said applicant.

That I, said Isaac W. Anderson, am well acquainted with the character of the land above described, and with each and every legal subdivision thereof, having frequently passed over the same, and that my personal knowledge is such as to enable me to testify understandingly in regard thereto. That there is not, to my knowledge within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposit of coal; and that there is not within the limits of said land to my knowledge any placer, cement mineral, or other valuable mineral deposits; that no portion of said land is claimed for mining purposes, under the local customs and rules of miners, or otherwise; that no part of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that the application made by the applicant herein is not made for the purpose of securing fraudulently title to mineral land, but is made for the purpose of obtaining rights as *bona fide* purchaser in good faith from the said railroad company.

That my post office address is Tacoma, Pierce county, Washington.

ISAAC W. ANDERSON.

I hereby certify that the foregoing affidavit was read to the affiant in my presence before he signed his name thereto; that said affiant is personally known to me, and that I verily believe him to be a credible person and the person he represents himself to me, and that this affidavit was subscribed and sworn to before me at my office in the Chamber of Commerce building, in the city of Tacoma, county of Pierce, and State of Washington, on this eleventh day of October, 1897.

M. L. CLIFFORD,
United States Commissioner."

"In the United States land office at Olympia, Washington.

STATE OF WASHINGTON, } ss:
County of Pierce, }

OCTOBER 11TH, 1897.

G. G. Rowe, being first duly sworn on his oath deposes and says: That he has examined and read the affidavit of Isaac W. Anderson, general manager of The Tacoma Land Company, the applicant to purchase under section 5 of the act of Congress approved March 3rd, 1887, the following described land, situate in Pierce county, State of Washington, to-wit:

The southwest quarter of the northwest quarter (S.W. ¼ of N.W. ¼) of section three (3) township twenty (20) north, of range two (2) east of the Willamette meridian.

That said tract of land is of the character and location as stated in said affidavit of said Isaac W. Anderson, that said land is of an odd section such as described by the grant made by Congress in aid of the Northern Pacific railroad and that said land is opposite a constructed portion of said railroad as in said affidavit set forth. That affiant stated on information and belief that said land was excepted from said grant, as in said affidavit shown.

8 "Affiant further says on information and belief that said land was not in the *bona fide* occupancy of any adverse claimants under the pre-emption or homestead laws of the United States at the date of the sale of said land to the said applicant by the Northern Pacific railroad, and on like information and belief, said affiant says that said land was not settled upon subsequent to the first day of December, 1882, and prior to March 3rd, 1887, by any person or persons claiming the right to enter the said land under the settlement laws of the United States.

That said applicant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business in the city of Tacoma, and State of Washington. That said applicant, The Tacoma Land Company, purchased the said land from the Northern Pacific Railroad Company on the — day of —— and affiant states on information and belief that said applicant paid therefor the sum of $—; that said lands were purchased, as this affiant is informed and believes, by said applicant, in good faith and prior to the determination by the Department of the Interior that said lands were excepted from the grant of said railroad, and while relying upon the representations made by said railroad company, that said lands were a part of its said grant. That affiant has compared the copy of deed attached to the affidavit of said Isaac W. Anderson, with the original deed of conveyance made by said railroad to said applicant, and that the same is a true and correct copy thereof that affiant is well acquainted with the character of the land above described, and with each and every legal subdivision thereof, and that his personal knowledge is such as to enable him to testify regarding the same; that there is not within the limits of said land any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposit of coal; that no portion of said land is claimed for mining purposes under the local customs and rules of miners, or otherwise that no part of said land is worked for mineral during any part of the year by any person or persons, and that said land is essentially non-mineral land.

That affiant's post office address is Tacoma, Pierce county, Washington.

G. G. ROE.

I hereby certify that the foregoing affidavit was read to the affiant in my presence, before he signed his name thereto; that affiant is personally known to me, and that I verily believe him to be a credi-

ble person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in the Chamber of Commerce building in the city of Tacoma, county of Pierce, and State of Washington, this 11th day of October, 1897.

M. L. CLIFFORD,
United States Commissioner."

In the United States land office at Olympia, Washington.

STATE OF WASHINGTON, } ss:
County of Pierce, }

OCTOBER 11TH, 1897.

John R. Arkley, being first duly sworn on oath deposes and says, that he has examined and read the affidavit of Isaac W. Anderson, general manager of The Tacoma Land Company, the applicant to purchase under section 5 of the act of Congress approved March 3rd, 1887, the following described land, situate in Pierce county, State of Washington, towit:

The southwest quarter of the northwest quarter (S. W. ¼ of N. W. ¼) of section three (3) township twenty (20) north of range two (2) east of the Willamette meridian.

That said tract of land is of the character and location as stated in said affidavit of said Isaac W. Anderson; that said land
9 is of an odd section such as described by the grant made by Congress in aid of the Northern Pacific railroad, and that said land is opposite a constructed portion of said railroad as in said affidavit set forth. That affiant states on information and belief that said land was excepted from said grant as in said affidavit shown.

Affiant further says on information and belief that said land was not in the *bona fide* occupancy of any adverse claimants under the preëmption or homestead laws of the United States at the date of the sale of said land to the said applicant by the Northern Pacific railroad; and on like information and belief said affiant says that said land was not settled upon subsequent to the first day of December 1882 and prior to March 3rd, 1887, by any person or persons claiming the right to enter the said land under the settlement laws of the United States.

That said applicant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business in the city of Tacoma, and State of Washington. That said applicant, The Tacoma Land Company purchased the said land from the Northern Pacific Railroad Company on the — day of —— and affiant states on information and belief — by said applicant in good fa-th and prior to the determination of the Department of the Interior that said lands were excepted from the grant to said railroad, and while relying upon the

representations made by said railroad company that said lands were a part of its said grant. That affiant has compared the copy of deed attached to the affidavit of said Issac W. Anderson, with the original deed of conveyance made by said railroad to said applicant, and that the same is a true and correct copy thereof; that affiant is well acquainted with the character of the land above described, and with each and every legal subdivision thereof, and that his personal knowledge is such as to enable him to testify regarding the same; that there is not within the limits of said land any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposit of coal, that no portion of said land is claimed for mining purposes, under the local customs and rules of miners, or otherwise, that no part of said land is worked for mineral during any part of the year by any person, or persons, and that said land is essentially non-mineral land.

That affiant's post office address is Tacoma, Pierce county, Washington.

JOHN D. ARKLEY.

I hereby certify that the foregoing affidavit was read to the affiant in my presence before he signed his name thereto; that affiant is to me personally known and that I verily believe him to be a credible person and the person he represents himself to be; and that this *affiant* was subscribed and sworn to before me at my office in the Chamber of Commerce building in the city of Tacoma, county of Pierce, and State of Washington, this 11th day of October, 1897.

M. L. CLIFFORD,
United States Commissioner."

XIV.

That said affidavits were prepared by the attorney for the Tacoma Land Company, and by him presented to said M. L. Clifford, who sworn the witnesses to them, and that said affidavits contain all the testimony offered by said Tacoma Land Company in support of its application, and at that time plaintiff appeared by her attor-
10 neys, C. W. Corliss, and J. W. A. Nichols, who presented and filed the protest and petition for a hearing set forth in paragraph IX hereof, and plaintiff also, by her attorneys, filed the following motion, to wit:

"Susan Ramsey, protestant, moves the dismissal of the application of the Tacoma Land Company to purchase the southwest quarter of the northwest quarter (S. W. ¼ of N. W. ¼) of section three (3) township twenty (20) north, of range two (2) east, for the reason that in the matter of the controversy, between the Tacoma Land Company, applicant, and Susan Ramsey, protestant, said applicant has introduced no evidence in support of its application, there being no

witnesses sworn to testify in support thereof, and no opportunity for cross-examination of the same.

C. W. CORLISS,
Att'y for Protestant."

XV.

Plaintiff further alleges that the said Tacoma Land Company at the time of its application to purchase said land and at all times was not and is not a citizen of the United States, and was and is therefore incapable of purchasing said land under the said provisions of the said act of Congress, of March 3rd, 1887, as not being within the class of persons for the relief of whom the said act was passed. That such fact fully appeared in the proceedings before the Land Office Department of the United States as hereinbefore set out and that the honorable Secretary erred in so construing said act as to include the said land company within its terms as a citizen of the United States.

XVI.

Plaintiff firther alleges that at the time and prior to its application to purchase said land, the said land company was disqualified to purchase the said land by reason of the fact that it had acquired, owned and held an amount of land in excess of the amount allowed by law to be acquired, held or owned by such corporation, to-wit: an amount in excess of five thousand acres (5,000) and that such fact was made fully to appear in the proceedings before the said Land Office Department in the said contest before the said department between the said company and this plaintiff concerning said land.

11 XVII.

Plaintiff further alleges that the said land herein in controversy was within the limit of the grant to the Northern Pacific Railroad Company by joint resolution of the Congress of the United States of May 31st, 1870 (16 U. S. Statutes, 378) as definitely located May 14th, 1874, but was excepted from the operation of the said grant by reason — the existence at the time of the said grant of a preemption filing on said land by one C. W. Kincade.

XVIII.

That by the reason of the fact that the said land was excepted from the operation of said grant by the existence of the said preemption filing thereon, the said railroad company did not acquire and has never acquired any right, title or interest in or to the said land, but the same was and remained a part of the public domain of the United States and subject to location and entry under the preemption and homestead laws of the United States.

XIX.

That on or about the 30th day of December, 1874, the said Northern Pacific Railroad Company, having no right, title or interest in or to said land, attempted to sell and convey the same to The Tacoma Land Company, defendant herein, together with a large amount of other lands in said county aggregating more than five thousand (5,000) acres, to-wit: about twelve thousand acres (12000) and for such purpose made, executed and delivered to said land company a deed purporting to convey to the said land company the said twelve thousand (12,000) acres, including the land herein in controversy which deed was recorded in the auditor's office of said county in Book 4, at page 682 which purchase and sale is the same purchase referred to and claimed by said land company in its application to purchase from the United States, as set out in paragraph XI hereof.

XX.

Plaintiff further shows to the court, and alleges that neither
12 the said Northern Pacific Railroad Company nor any grantee acquired or could acquire any right or title to the said land other than under the provisions of the act of Congress, of March 3rd, 1887, permitting *bona fide* purchasers, citizens of the United States to purchase the same from the United States. That the said land company was not qualified to purchase under said act, not being a citizen of the United States or capable of becoming a citizen within the meaning of said act.

That the said land company never attempted to purchase said land under said act or to accept the benefit thereof, for more than ten years after the passage of the said act, and not until after this plaintiff had entered the same as her homestead under the land laws of the United States as aforesaid, and had expended more than twelve hundred dollars ($1200.) in buildings and improvements thereon. That until this plaintiff entered upon the said land the same was entirely unoccupied wild land, wholly unimproved, all of which fully appeared in the said proceedings before the said Government land departments.

XXI.

Plaintiff further alleges that the said land company was never a *bona fide* purchaser from the said railroad company for the reason that at *and* all times prior to the said land company's application to purchase, in 1897, they the said companies were to all intents and purposes one and the same company, controlled by the same persons and officers and that the said railroad company owned more than fifty per cent. (50 %) of the stock of the said land company.

XXII.

Plaintiff shows to the court and alleges that if the said land company and its grantees shall be allowed to hold and retain title to the

said land that this plaintiff will be greatly and irreparably
13 injured without fault on her part and without redress that she entered said land as her homestead with the approval of the officers of the land department of the United States, and after the said neglect and refusal of the said land company for more than ten years to make any attempt to acquire the same under the said act of Congress, even had it been within the class of persons for whose relief, the said act was passed. That plaintiff has acted in all things in the said matter in entire good faith, and that without the aid of this court will be deprived of her money, time and labor expended upon the said land and will be wholly remediless.

XXIII.

That the United States land officers wrongfully and erroneously allowed the Tacoma Land Company to make entry of said land without proof of the facts set forth in its application and without any right to make such entry.

XXIV.

That the United States land officers wrongfully and erroneously cancelled the homestead entry of plaintiff without a hearing and without a notice.

XXV.

That the said United States land officers have wrongfully and by mistake of the law, issued a patent for said land to the Tacoma Land Company before the commencement of this action, conveying to it the fee simple title to said land, and that said Tacoma Land Company has knowledge at all such times of the existence of the rights of plaintiff, and that it received said title subject to the rights of plaintiff.

XXVI.

That the honorable Commissioners of the General Land Office and the honorable Secretary of the Interior erred in their rulings and decisions of this said cause before the said departments in the following particulars:

1st. In holding that the attempted purchase of said lands by the land company from the Northern Pacific Railroad Company was in good faith.

14 2nd. In holding that the error in allowing the land company to perfect its application into an entry in the presence of former existing homestead entry of Miss Ramsey was not of the gravity to warrant a rejection of the company's claim.

3rd. In holding that the land company is a citizen of the United States within the meaning of the law of March 3rd, 1887, (24 Stat. 566).

4th. In holding that the land company was entitled to hold, pur-

chase and acquire more than 5000, acres of land, notwithstanding the act of Congress of March 3d, 1887 (24 Stat. 476) restricting such ownership.

5th. In holding it to be immaterial that the land company delayed its attempt to purchase said land until after Miss Ramsey's homestead entry thereof.

6th. In holding that said company was not guilty of laches in delaying for more than ten years after the passage of the act of March 3d, 1887, its application to purchase said lands under the provisions of said act and until after the homestead entry of Miss Ramsey had been perfected.

7th. In sustaining said company's application to purchase said lands.

8th. In ordering the cancellation, and in cancelling the Miss Ramsey homestead entry.

9th. In refusing to issue to Miss Ramsey a patent to said lands.

10th. In directing the issuance and issuing a patent to said land to the said land company.

All of which errors are shown in the findings, rulings and decisions of the said honorable Commissioner and Secretary, hereto attached, marked respectively Exhibits "A" and "B" and made a part of this complaint.

XXVII.

That the Philadelphia Trust Safe Deposit and Insurance Company, John C. Bullitt, trustee etc., for the estate of Charles B. Wright,
15 deceased, and Frank J. Aldrich, receiver of the Tacoma National Bank of Tacoma, claim to have some interest in and to the land above described, which interest plaintiff is unable to set forth, but such interest is subject to the rights of plaintiff in this action.

Wherefore plaintiff prays for the judgment of this court as follows:

That plaintiff be decreed to be the owner of the said land, to-wit: The south-west quarter of the northwest quarter (S. W. ¼ of N. W. ¼) of section three (3) township twenty (20) north range two (2) east W. M. situate in Pierce county, State of Washington, which land was patented to the Tacoma Land Company; and that said Tacoma Land Company, and all persons claiming an interest in said land be decreed trustees for the use of plaintiff and required to convey the same to plaintiff free from all claims of every kind.

That a commissioner be appointed by this court to convey all claims of defendants in and to said land to this plaintiff.

And for such other and further relief as to the court may seem just and equitable; and for her costs and disbursements in this action.

J. W. A. NICHOLS,
JOHN C. STALLCUP,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

J. W. A. Nichols being first duly sworn on his oath says: That he is one of the attorneys for plaintiff in the above entitled action; that he has read the foregoing amended complaint, knows the contents thereof, and that the allegations therein contained are true; that he makes this verification as attorney for plaintiff for the reason that all the facts therein stated are within the personal knowledge of affiant.

16 J. W. A. NICHOLS.

Subscribed and sworn to before me this 5th day of February, 1902.

E. R. YORK,
Notary Public in and for the State of Washington,
Residing at Tacoma, Pierce Co.

17 EXHIBIT "A."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September* 26, 1899.

TACOMA LAND COMPANY, *E.* S. MORTGAGE & TRUST CO. OF NEW YORK, Intervenor,
vs.
SUSAN A. RAMSEY.

Register and receiver, Olympia, Washington.

GENTLEMEN: Under authority of departmental decision of July 13, 1896, in the case of Charles W. Corliss *vs.* Northern Pacific Railroad Co., this office by letter "F" of October 13, 1896 cancelled said company's listing No. 3 of August 27, 1884, as to the S. W. ¼, N. W. ¼ sec. 3, T. 20 N., R. 2 E.

The said departmental decision which reversed the office decision of August 13, 1894, in favor of the railroad company was based on the ground that under the ruling (Fish *vs.* Northern Pacific Railroad Co. 21 L. D. 165 on review 23 L. D. 15) then in full force, the uncancelled of record pre-emption filing No. 1244 of W. C. Kincade made on the land May 19, 1869, alleging settlement May 15, 1869, was sufficient to except the land from the operation of the company's grant, even though said filing had expired, (which it had not, as hereinafter shown) at the date (May 31, 1870) of the grant through failure of the pre-emptor to make proof and payment thereon within the statutory period of twelve months from date of his alleged settlement on the land.

In view of the elimination of the railroad grant as above you

permitted Susan A. Ramsey to make homestead entry No. 1885 on the land February 24, 1897. Thereafter upon due notice of its intention so to do, you allowed the Tacoma Land Company to submit proof in support of its application to enter the land under section 5 of the act of March 3, 1887 (24 Stat. 556) on October 11, 1897, when it appears Miss Ramsey appeared as a protestant and also submitted evidence in support of her claim to the land.

After considering this proof, protest and affidavits you decided in favor of the land company, and on October 15, 1897, allowed it to make cash entry No. 1304 on the land under section 5 of the act of March 3, 1887 *supra*. This was error, inasmuch as the existing homestead entry of Miss Ramsey segregated the land and was a bar to further entry until removed by cancellation.

The conflicting claims of said land company and Miss Ramsey are now before this office on appeal by the latter from your action in dismissing her protest and allowing the former's cash entry as aforesaid.

A re-examination of the official records discloses that the facts as regards the land being within the primary limits of the grant by the joint resolution of Congress of May 31, 1870 (16 Stat. 378) as definitely located May 14, 1874, and also within the limits of the withdrawal which was made for the benefit of said grant on map of general route filed August 13, 1870, are set forth in office decision of August 13, 1894, in the Corliss case, but that said decision was in error in the statement that said pre-emption filing of Kincade was

18 on "offered" land, and had therefore expired at the date of the grant through failure of the preemptor to make proof and payment thereon within the statutory period of twelve months from date of his alleged settlement.

The office was led into the error through the supposition that the notation "vacant lands of township offered July 13, 1863" which appears on the official tract book at the head of township 20 N. range 2 E., included all of the lands in said township and range then vacant on the records.

But a reference to the President's proclamation No. 693, of March 20, 1863, under authority of which the offering was made, discloses that the only lands in said township and range that were to be offered for sale on July 13, 1863, are those in "fractional sections 7 and 18." Furthermore the abstract of pre-emption filings received from your office in May, 1869 shows that the land in controversy was filed on by Kincade as "unoffered" land.

The filing of Kincade being therefore shown not to have expired at the date of the railroad grant the recent ruling of the department in the case of Oregon & California Railroad Co. (28 L. D. 477) based on the decision of the Supreme Court in Northern Pacific Railroad Co. *vs.* De Lacey (174 U. S. 622) that "an unexpired preemption filing of record at the date when a railroad grant becomes effective is not an existing claim that serves to defeat the operation of the grant" would not affect the present case or disturb the de-

partment's holding in the Corliss case that such filing defeated the grant.

Such being the case the question presented for consideration herein is as to whether the Tacoma Land Company is entitled to enter the land under the act of March 3, 1887 (24 Stat. 556).

In support of its entry, the land company submits a verified copy of a deed made by the railroad company December 30, 1874 conveying the land in controversy to the land company for a valuable consideration and in all other essential particulars meets the requirements of office regulations in the matter of final proof. Unless, therefore, the points raised by Miss Ramsey in support of her protest and appeal are found to be well taken, I must affirm your holding that the land company's entry should be sustained.

Her first and second assignments of error in your decision are in effect that the land company having at the date of its purchase of the land from the railroad company on December 30, 1874, had notice of the pre-emptien of Kincade filed May 19, 1869, which excepted the land from the railroad grant, can not claim to have been in the attitude of a *bona fide* purchaser. As shown, the land was at the date of the land company's purchase within the limits reserved for the railroad company under the withdrawal on general route of August 13, 1870, and of definite location of May 14, 1874. As further shown such withdrawal and reservation continued until the final elimination of the railroad claim under authority of the department's decision of July 13, 1896, in the Corliss case.

Its purchase of the land from the railroad company, upon such a showing as to the status of the land, did not, therefore, evince bad faith on the part of the land company.

Nor is the fact, as urged in the third assignment of error and shown by the record that the land company on August 20, 1890 conveyed the land to Wm. B. Blackwell for a valuable consideration and has now no interest in the land, material as it is held (Union Pacific Railway Co. *et al.*, *vs.* McKinley 14 L. D. 237) that a *bona fide* purchaser from a railroad company, who has sold and transferred the land, may perfect title under section 5 of the act of March 3, 1887, for the protection of his grantee.

While it was error as urged in Miss Ramsey's fourth assignment and as hereinbefore stated, to allow the land company to perfect its application into an entry in the presence of the former existing entry, such irregularity was not of the gravity to warrant a rejection of the latter's claim in the absence of other and more substantial reasons. Nor, as further alleged in said assignment and also shown by the record does the fact that Miss Ramsey was occupying and improving the land under her entry at the date of the presentation of the
19 land company's application to purchase, invalidate such application inasmuch, as it appears that her settlement and improvements were not only begun on the land June 1, 1897, subquent to the date (February 24, 1897) of her entry, but long after said company had purchased the land from the railroad Co.

"A settlement claim acquired after the passage of the act of March 3, 1887, and subsequent to the sale of the land by the railroad company, will not defeat the right of the purchaser or his transferree, to perfect title under the provisions of section 5 of said act." (Holton *vs.* Rutledge, 20 L. D. 227)

As to Miss Ramsey's fifth assignment of error, that the witnesses in support of the land company's proof were not sworn on the day (October 11, 1897) set for taking such proof, and that no opportunity was therefore given protestant to cross-examine said witnesses, the same does not appear to be sustained by the record in the case, which discloses the following on this point: At the time and place set for the submission of the Land company's proof, the said company was represented by attorney and its final proof witnesses, Isaac W. Anderson, G. G. Rowe, and John R. Arkley, were present in person. The final proof affidavits which said witnesses were to sign, and which had been prepared previously by the applicant's counsel, were read over to said witnesses and then sworn and subscribed to by them in the presence of the United States commissioner taking the proof, as well as in the presence of the protestant Ramsey, and her attorney, who, it appears, was given the opportunity to cross-examine said witnesses on the matters contained in the proof affidavits, but instead of so doing filed motion, which was overruled, for the rejection of said proofs, because of the manner in which the same had been taken.

The land company's proof being in due form and sufficient in all essential particulars, as hereinbefore stated, and it appearing from the foregoing that due opportunity was afforded Miss Ramsey to cross-examine the company's proof witnesses, her objection to such proof, for the reasons urged in her appeal, was properly overruled by you.

Likewise, without force in Miss Ramsey's sixth assignment of error that the land company is not a citizen of the United States within the meaning of the said act of March 3, 1887 (24 Stat. 556) as it was held by this office in its decision of September 20, 1895, in the case of said Land Company *vs.* Abner Shrives, *et al.* which decision was affirmed by the department April 12, 1898, that

"A corporation organized and existing under the laws of a State, as the Tacoma Land Company appears to have been, is in contemplation of law a citizen of the United States, and as such entitled to perfect its title to land under section 5 of the act of March 3, 1887"

Citing Tilford *et al. vs.* Keystone Lumber Co. on review, 19 L. D. 141 Daily *vs.* Marquette, Houghton & Ontonagon R. R. Co. *et al.*, 19 L. D. 148.

Nor is the act of March 3, 1887 (24 Stat. 476) restricting the ownership of real estate in the Territories and the District of Columbia to American citizens, and prohibiting corporations from acquiring or holding lands in excess of 5,000 acres, in any Territory

of the United States, applicable to the present case, for, as also held in the case of said Land Company *vs.* Shrives *et al.*

"The effect of said act was to confirm such purchases as had, like the land company's been previously made, inasmuch as to hold otherwise would not only render the act retroactive and therefore nugatory, but do violence as well to the very plain intent and purpose of the act itself as expressed by its first section, wherein it is declared in unequivocal language that 'it shall be lawful for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire, hold, or own real estate etc. in any of the Territories of the United States or in the District of Columbia.'"

20 The protestant's seventh assignment of error, that the deed from the railroad company to the land company shows the latter to be the holder of an amount of land largely in excess of the amount (5,000) acres limited by section 3 of said act (24 State. 476,) is therefore also without force.

Nor, as further urged by Miss Ramsey, is it material that the land company purchased the land from the railroad company subsequent to the passage of the act of March 3, 1887 (24 Stat. 556) as it is held (Adrus *et al. vs.* Balch 22 L. D. 236,) that:

"In the exercise of the right to perfect title under section 5 of the act of March 3, 1887, it is not material whether the purchase from the company was made before or after the passage of said act, if made in good faith, believing the title to be good, and before the land purchased was held to be excepted from the grant."

Miss Ramsey's eighth and last assignment of error that the land company has been guilty of laches in delaying its application for more than ten years after the passage of said act, is not sustained by the records, which disclose that its application was presented (August 27, 1897) within less than a year after the decision of the department in the Corliss case, holding that the land was excepted from the railroad grant, had been declared final by this office on October 13, 1896.

The premises considered, your decision in favor of the Tacoma Land Company is affirmed, and Miss Ramsey's said homestead entry No. 1885 is hereby held for cancellation for conflict with the superior claim of said company to the land in controversy. You will so advise the parties, allowing Miss Ramsey the usual right of appeal.

In view of the foregoing, no action would appear necessary on the petition to intervene, which was filed in this office January 21, 1899, by David A. Gourick, resident attorney, on behalf of the United States Mortgage & Trust Company of the State of New York, to which it appears Blackwell, the said transferee of the land from the Tacoma Land Company, mortgaged an undivided two-thirds interest in the land on December 1, 1893, and by which, it further appears, said undivided two-thirds interest was purchased at the foreclosure sale that was subsequently had under said mortgage.

The said resident attorney will be so advised direct by this office.

Very respectfully, BINGER HERMAN,
Commissioner."

21 EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July* 10, 1900.

SUSAN A. RAMSEY
vs.
THE TACOMA LAND CO. } Vol. 27, No. 833. W. V. D. Involving S. W. ¼ of N. W. ¼ of sec. 3, T. 20 N., R. 2 E., Olympia Land District, Washington.

The Commissioner of the General Land Office.

SIR: Susan A. Ramsey has appealed from your office decision of September 26, 1899, holding for cancellation her homestead entry upon the S. W. ¼ of N. W. ¼ of sec. 3, T. 20, N., R. 2 E., Olympia land district, Washington, and awarding to the Tacoma Land Company the right to purchase said land under the provisions of section 5, act of March 3, 1887, (24 Stat. 556).

The land in question is within the primary limits of the grant to the Northern Pacific Railroad Company, by joint resolution of Congress of May 31, 1870 (16 Stat. 378) as definitely located May 14, 1874, but was held to have been excepted from the operation of the said grant by departmental decision of August 13, 1896, in case of Charles W. Corliss *v.* Northern Pacific Railroad Co., (not reported) by reason of the existence of a pre-emption filing thereon at date of the grant. The claim of the railroad company having been eliminated, Ramsey was allowed to make homestead entry, No. 1885, upon said land February, 24, 1897. The Tacoma Land Company as the grantee and *bona fide* purchaser from the railroad company, applied to purchase the land under the provisions of section 5, of the act of March 3, 1887 *supra*. Thereafter on October 11, 1897, the local officers allowed the Tacoma Land Company, in pursuance of notice duly published, a copy of which was served upon Ramsey to submit final proof in support of its application to purchase, the testimony being taken on said date before M. L. Clifford, at Tacoma, Washington, at which time and place Ramsey appeared in person and by attorney and filed a protest against the allowance of said company's application to purchase and the acceptance of its proof, and submitted testimony in support of her claim to the land under her homestead entry of record therefore.

Upon consideration of the proof submitted by said company and the protest and evidence submitted by Ramsey, the local officers on October 15, 1897, found said proof satisfactory and allowed the same of record, cash receipt No. 1304, being issued thereon.

From said action by the local officers Ramsey appealed, and by your said office decision of September 26, 1899, the action of the

local officers in allowing the company's cash entry to go of record while the land was segregated by existing homestead entry of Ramsey was held to have been erroneous; but the proof submitted by the company in support of its application to purchase having been found to be in due form and sufficient in all essential particulars, the decision of the local officers as to the merits of the respective claims of the parties thereto was affirmed and the homestead entry of Ramsey was held for cancellation for conflict with the
22 superior claim of said company to the land in controversy.

The errors assigned by Ramsey in her appeal from your decision now under consideration, are practically the same as those insisted upon before your office, and are, in substance, as follows:

First. That there was error in your decision in that no witnesses testified on behalf of the applicant at the hearing on the 11th day of October, 1897, and no opportunity was given protestant to cross-examine witnesses:

Second. That there was error in that the applicant failed to show that it was a *bona fide* purchaser of the land in question form the railroad company; that said applicant, The Tacoma Land Company is not qualified to purchase said land under the provisions of section 5 of the act of March 3, 1887 because it is not a citizen of the United States, and has transferred the land involved and now has no interest therein, and because the deed from the railroad company to said applicant shows the latter to be the owner and holder of an amount of land in excess of the limitation prescribed by the act of March 3, 1887 (24 Stat. 476) prohibiting certain corporations from acquiring or holding more than 5000 acres of land in any of the Territories of the United States.

The certificate of the United States commissioner attached to the proof submitted by said land company on October 11th, 1887, in support of its application to purchase, recites:

"That the protestant, Susan A. Ramsey, appeared in person and by her attorney C. W. Corliss, with her witness, J. C. Donoway; that the affidavits of said Isaac W. Anderson G. G. Rowe and John R. Arkley (final proof witnesses) were read over to said affiants and subscribed and sworn to in my presence and in the presence of the protestant and her attorney, and opportunity was given said protestant to cross-examine said affiants on the matters contained in said affidavits.

Moreover at the time said proof was submitted, Miss Ramsey testified as a witness in her own behalf, and submitted the testimony of another witness, which shows that she did not establish her residence upon the land in question until June 1, 1897, since which time she has resided thereon and improved the same, and that her improvements at date of hearing were of the probable value of twelve hundred dollars; but the testimony submitted by her does not in any manner contradict or, traverse the proof submitted by the land company touching its qualifications to purchase the land in question under the provisions of section 5 of the act of March 3,

1887, *supra* by reason of its alleged purchase of said land from the railroad company on December 30th, 1874. In view of the foregoing, appellant's first assignment of error hereinbefore mentioned does not appear to be well founded, and it is also apparent that if the Tacoma Land Company is qualified to purchase the said land under the provisions of said act, its right- thereto are superior to those of Ramsey under her entry and settlement made long after the passage of said act (Skinvik *v.* Longstreet *et al.*, 22 L. L. 32).

The proof submitted by the Tacoma Land Company, in support of its application to purchase, shows that it is a corporation, organized under the laws of Pennsylvania, and doing business in the State of Washington, and that, for a valuable consideration, it purchased the land in controversy, from the Northern Pacific Railroad Company on December 30, 1874, said purchase being evidenced by a copy of the deed of conveyance therefor, which shows that the same was duly recorded in Pierce county, Washington in which said land is situated on March 10, 1875.

Appellant insists that the Tacoma Land Company, being a corporation is not qualified, as to citizenship under the provisions of section 5, of the act of March 3, 1887. This contention cannot be sustained. In the case of this same corporation, The Tacoma Land Company *v.* Northern Pacific Railroad Co., *et al.* (26 L. D. 503) it was held by the department that—

23 "A corporation created and existing under the laws of a State is a citizen of the United States within the meaning and intent of section 5, act of March 3, 1887."

It is also contended that said land company is disqualified from purchasing said land under the provisions of said act, for the reason that it transferred its interest therein acquired from the railroad company. Appellant introduced in evidence at the hearing before the United States commissioner, a certified copy of a warranty deed, which shows that the land in controversy, was conveyed by the Tacoma Land Company to William B. Blackwell on August 22, 1890, and on January 21, 1899, while the case was pending in your office on appeal, the United States Mortgage and Trust Company filed a petition therein, alleging that it is a corporation organized under the laws of the State of New York and doing business in the State of Washington; that on December 1, 1893, Blackwell mortgaged to it an undivided two-thirds ($\frac{2}{3}$) interest in the land in controversy; that thereafter it purchased said undivided two-thirds interest in said land at judicial sale under a decree of foreclosure of said mortgage, and the prayer of its petition is that it may be allowed to intervene herein to protect its rights in the premises.

In the case of The Union Pacific Railway Co. *v.* McKinley (14 L. D. 237) it was held by the department that—

"A *bona fide* purchaser from a railroad company, or one taking under such purchase, who has sold and transferred the land may perfect title under section 5 of said act, where the claim of the company fails."

In the case at bar, the deed made by the Tacoma Land Company to Blackwell for the land in controversy, contains covenants of warranty. An undivided two-thirds (⅔) interest in said land now appears to be held by the United States Mortgage and Trust Company under its purchase at foreclosure sale.

Blackwell does not appear to have taken any steps to perfect title to the land in question. Under such circumstances, no reason is apparent why the Tacoma Land Company if otherwise qualified, should not be allowed to purchase said land and thereby be in position to fulfill the covenants of warranty contained in the deed to Blackwell. Title thus perfected in the Tacoma Land Company would inure to the benefit of both Blackwell and the United States Mortgage and Trust Company, subsequent grantees.

Appellant's remaining contention is that the deed executed by the railroad company to the Tacoma Land Company shows the latter to be the owner and holder of lands in excess of the limitation prescribed by the act of Congress passed March 3, 1887 (24 Stat. 476) prohibiting certain corporations from acquiring or holding more than 5,000 acres of land in any of the Territories of the United States, and that said company is thereby disqualified as a purchaser of the land in controversy under the provisions of the 5th section of the act of March 3, 1887 (24 Stat. 556). The deed referred to shows that the amount of land conveyed by the railroad company to said land company, on December 30, 1874, aggregated about 12,000 acres.

The number of acres held or owned by said company at date of filing its application to purchase herein, is not shown, section 3 of the prohibitory act, *supra*, provided that no corporation, other than those organized for the construction or operation of railway, canal, or turnpikes, should acquire, hold or own more than 5000 acres of land in any of the Territories of the United States, but contained the further provision that "the prohibition of this section shall not affect the title to any lands now lawfully held by any such corporation."

The land in question, at the date of the passage of said prohibitory act, was then, and ever since 1871 had been, held by said corporation under deed of conveyance from the railroad company, and by the terms of the remedial statute hereinbefore mentioned, passed by Congress on the same day, said corporation, if otherwise qualified as therein specified, was specifically given the right to purchase
24 said land. The Territory of Washington had also been admitted as a State prior to the filing of said land company's application to purchase. Again, the prohibitory act, above mentioned was subsequently amended by act of March 2, 1897 (29 Stat. 618) so as to read as therein set forth. The prohibitory provisions as to corporations, contained in the original act, are omitted from the amendatory act and the seventh section thereof provides that said amendatory act shall not be construed "to in any manner affect or change the laws regulating the disposal of the public lands of the United States."

Moreover, the provisions of section 5 of the act of March 3, 1887

under which said company has applied to purchase, are remedial in their character, giving to those qualified, as therein prescribed the right to purchase from the Government lands which they had theretofore bought in good faith from the railroad company as part of its grant, and which for any reason were excepted from such grant. The only personal qualifications of purchasers prescribed by said section is that they be "citizens of the United States, or persons who have declared their intention to become such citizens" and there is no limitation whatever therein prescribed as to the amount of acreage which could be purchased under the provisions of said section, provided the land applied for were otherwise within the purview of said act. Appellant's contention in this regard, therefore, is untenable.

There is nothing in the record to indicate bad faith on the part of the Tacoma Land Company, and as the proof submitted on support of its application to purchase the land in controversy appears to be otherwise substantially in conformity to the requirements of your office and the department, no error is apparent in your decision.

On May 22, 1900, resident counsel for the United States Mortgage and Trust Company filed in the case a brief requesting that patent for the undivided two-thirds (⅔) interest in the land in question, now alleged to be owned by it under its purchase at foreclosure sale, be issued direct to said company. Inasmuch as said mortgage and trust company claims an interest in the land through the Tacoma Land Company, and title perfected in the latter would inure to the benefit of the former, no reason is apparent for disturbing the cash entry already of record.

Your office decision is accordingly affirmed.

The papers are herewith returned.

Very respectfully, THOMAS RYAN,
Acting Secretary.

25 Copy.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept.* 25, 1900.

SUSAN A. RAMSEY
v.
THE TACOMA LAND COMPANY. } Vol. 27, No. 833.

The Commissioner of the General Land Office.

SIR: By your office letter of September 16, 1900, there was transmitted to the department a motion filed by Susan A. Ramsey for rehearing in the case of said Ramsey *v.* The Tacoma Land Company, and for review of the departmental decision of July 10, 1900, therein, whereby the homestead entry of Ramsey upon S. W. ¼ of N. W. ¼ of sec. 3, T. 20, N. R. 2 E. Olympia, Washington, land district, was held for cancellation and the Tacoma Land Company was awarded

the right to purchase said land under the provisions of section 5 of the act of March 3, 1887 (24 Stat. 556).

The motion is based upon the affidavit executed by Ramsey, alleging in substance that she was deprived of a full and fair hearing at the trial of said cause before the local land office, in that the officer before whom the testimony was taken denied her the privilege of cross-examining the final proof witnesses offered by the Tacoma Land Company in support of its application to purchase.

The same complaint was fully discussed and considered by the department in its decision sought to be reviewed herein, and was therein found to be without merit, and is was also found that Miss Ramsey had testified at the hearing as a witness in her own behalf, and that her own testimony showed that she did not become a settler upon the land involved until June 1, 1897, long after the purchase of said land from the railroad company by the land company and the passage of the act of March 3, 1887, *supra*. and that the testimony submitted by her did not in any manner contradict or traverse the proof submitted by the land company touching its qualifications to purchase said land under the provisions of said act.

The affidavit now filed in support of said motion for review and rehearing presents no new matter for consideration, and fails to set forth any allegations of fact, which if proven would warrant a reversal or modification of said decision heretofore rendered herein.

Ramsey's motion for review and rehearing is therefore denied.

The papers are herewith returned.

Very respectfully, E. A. HITCHCOCK, *Secretary.*

26

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct.* 4, 1900.

SUSAN A. RAMSEY
v.
TACOMA LAND COMPANY. } S. W. ¼ N. W. — Sec. 3-20-2, E.

Register and receiver, Olympia, Washington.

GENTLEMEN: In reference to the above entitled case, I herewith enclose copy of the decision of the honorable, the Secretary of the Interior dated September 25, 1900, denying the motion for review of departmental decision of July 10, 1900, which held in favor of the land Co.

Said case is accordingly hereby closed. Notify the parties in interest.

The hd. entry of Ramsey is this day cancelled. The cash entry No. 1304 of the Tacoma Land Company is approved for patent.

Respectfully, W. A. RICHARDS,
Acting Commissioner.

Copy of the foregoing amended complaint received this 5th day of February, 1902.

E. R. YORK,
Att'y for Defendants Except Frank J. Aldrich, Receiver.

Filed Mar. 11, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

27 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff, vs. TACOMA LAND COMPANY, a Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustees of the Estate of Charles B. Wright, Deceased, and Frank J. Aldrich, Receiver of the Tacoma National Bank, Defendants.	No. 18901. Demurrer to Amended Complaint.

Come now the defendants, Tacoma Land Company, a corporation, and Philadelphia Trust, Safe Deposit and Insurance Company, a corporation, and John C. Bullitt, trustees for the estate of Charles B. Wright, deceased, and demur to the amended complaint of the plaintiff herein and for the grounds of demurrer allege:

1st.

That said amended complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them, nor to entitle the plaintiff to the relief prayed for, or any relief against these defendants, or any of them.

2nd.

That the rights and claims of the plaintiff alleged in her amended complaint herein have been fully adjudicated between the plaintiff and said defendants, and finally determined adversely to the plaintiff by the Land Department of the United States having jurisdiction thereof.

3rd.

That this court has no jurisdiction of the subject matter of this action.

E. R. YORK,
Attorney for the Demurring Defendants.

28 Due service of foregoing demurrer by receipt of a copy thereof is hereby admitted this 11th day of February, 1902.

J. W. A. NICHOLS,
Attorneys for Plaintiff.

Filed Feb. 21, 1902.

ROBERT P. RIGNEY, *Clerk.*

29 In the Superior Court, Pierce County, Washington.

SUSAN A. RAMSEY
vs.
TACOMA LAND CO. ET AL. } No. 18901.

This cause coming on for hearing on the demurrer of the defendants to the amended complaint of the plaintiff, the plaintiff appearing by her counsel J. W. A. Nichols, and John C. Stallcup, and the defendants, The Tacoma Land Company, The Philadelphia Safe Deposit and Insurance Company, and John C. Bullitt, trustees of the estate of Charles B. Wright, deceased, appearing by their attorney, E. R. York, the court after argument and being fully advised in the premises hereby orders that the said demurrer be and the same is hereby overruled, to which order said defendants except and their exception is allowed.

THAD HUSTON, *Judge.*

Ent. Jour. 85, page 121, dept. 2, Apr. 29, 1902.

30 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff,
vs.
TACOMA LAND COMPANY, a Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustees for the Estate of Charles B. Wright, Deceased, and Frank J. Aldrich, Receiver of the Tacoma National Bank, Defendants. } No. 18901. Answer.

Come now the defendants, Tacoma Land Company, a corporation, and Philadelphia Trust, Safe Deposit and Insurance Company, a corporation, and John C. Bullitt, trustees for the estate of Charles B. Wright, deceased, and for their answer to the amended complaint of the plaintiff herein, allege:

I.

They admit the allegations set forth and contained in paragraphs I, II, III and IV of said amended complaint.

II.

They allege that they have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs V and VI of said amended complaint, and therefore deny the same.

III.

They allege that they have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of said amended complaint, and they therefore deny the same; except that they deny that the land therein referred to was not in any reservation of lands by the United States.

IV.

They allege that they have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in
31 paragraph VIII of said amended complaint, and they therefore deny the same; except that they admit that the land office refused to receive any final proof of plaintiff upon said land for the reason that plaintiff's attempted entry of said land had been finally cancelled.

V.

They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IX of said amended complaint, and they therefore deny the same.

VI.

They admit the allegations set forth and contained in paragraphs X and XI of said amended complaint.

VII.

They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XII of said amended complaint.

VIII.

They admit that the Tacoma Land Company filed certain affidavits in support of its application to purchase said land, as alleged in paragraph XIII of said amended complaint, but they can not say whether said paragraph contains true copies of said affidavits so filed.

IX.

They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIV of said amended complaint, and they therefore deny the same.

X.

They deny the allegations contained in paragraphs XV and XVI of said amended complaint.

XI.

They admit that the land in controversy herein was within the limits of the grant to the Northern Pacific Railroad Company, as alleged, and admit that it was thereafter ruled by the Land
32 Department that said land was excepted from said grant by an alleged filing upon said land.

XII.

They deny the allegations contained in paragraph XVIII of said complaint.

XIII.

They deny that prior to or on or about the 30th day of December 1874, the Northern Pacific Railroad Company, had no right, title or interest in or to the land involved herein; and admit that on or about said date said Northern Pacific Railroad Company, sold, and for value, conveyed by its deed to the Tacoma Land Company, the said land, with other lands, and that said deed was duly filed for record and recorded in the office of the county auditor of Pierce county, Washington, on March 10, 1875, in Book 4 of Deeds, at page 682.

XIV.

They deny the allegations contained in paragraphs XX, XXI, XXII, XXIII and XXIV of said amended complaint, and each and all of the same.

XV.

They admit that the United States has issued to the Tacoma Land Company a patent for said land, but they deny that said patent was issued wrongfully or by mistake of law, and deny that the Tacoma Land Company had any knowledge at the times alleged of the existence of any rights of plaintiff to said land, and deny that said Tacoma Land Company received title to said land subject to any rights of the plaintiff thereto.

XVI.

They deny each and all of the allegations contained in paragraph XXVI of said amended complaint, and allege that each and all of the rulings and decisions therein referred to were correct and lawful.

XVII.

They admit that these defendants claim to have some interest in and title to the land in controversy herein, but they deny
33 that such title or interest is subject to any rights of the plaintiff thereto.

And for a further and affirmative answer and defense to plaintiff's amended complaint, these defendants allege:

First.

That the land- involved in this cause lie within the primary limits of the grant to the Northern Pacific Railroad Company by joint resolution of Congress, of May 31, 1870 (16 Stat. 378) for that portion of the main line of the Northern Pacific railroad between Portland and Puget sound as definitely located on May 14, 1874; and said land is within the limits of the withdrawal and reservation of lands from sale and entry which was made by the Land Department of the United States for the benefit of said grant upon the map of general route, of said railroad filed in the General Land Office on August 13, 1870; and said land was thereby and prior to December 30, 1874, withdrawn and reserved by the United States for the Northern Pacific Railroad Company from sale or entry as public lands, and said withdrawal, and reservation of said land continued in full force and effect until the cancellation of same by the ruling and decision of the Land Department in October, 1896, that said land was excepted from said grant to said railroad company.

Second.

That on or about December 30, 1874, and while said withdrawal and reservation of said land continued in force and effect, the Tacoma Land Company, for value and in good faith, purchased said land from the Northern Pacific Railroad Company, and said Northern Pacific Railroad Company in good faith and for value sold and by its deed conveyed said land to the Tacoma Land Company, and said deed was on March 10, 1875, filed for record and recorded in the office of the auditor of Pierce county, Washington, in which county said land is situate. Thereupon and under said deed of conveyance to it the Tacoma Land Company entered into and took possession of said land, and has ever since possessed, held and claimed the same and the title thereto and said company and
34 its grantees have since continued in the possession of said land, and *has* ever since possessed, held and claimed the same and the title thereto, and said company and its grantees have since continued in the possession of said land until the wrongful and unlawful entry thereon made by the plaintiff herein in the year 1897.

Third.

That the Land Department of the United States in October, 1896, in a proceeding therein pending between conflicting claimants of said land decided and ruled that said land had not passed by, but was excepted from, the grant to the Northern Pacific Railroad Company; and thereupon the Tacoma Land Company, as the *bona fide* purchaser of said land from said company, applied on August 27

1897, to purchase and enter said land under the provisions of section 5 of the act of Congress of March 3, 1887 (24 Stat. 556), to which act reference is hereby made.

Fourth.

That on or about February 24, 1897, the plaintiff applied to enter said land at the local land office under the homestead laws, and on or about June 1, 1897, wrongfully and unlawfully entered into and upon said land under her claim of a homestead entry thereon. That at all of said times the plaintiff had full notice and knowledge of the rights, and claims and possession of said land by the Tacoma Land Company and its grantees as *bona fide* purchasers of said land from the Northern Pacific Railroad Company and of the rights of said Tacoma Land Company under said act of Congress of March 3rd, 1887, and well knew that said Tacoma Land Company had been in possession of said land claiming title thereto since 1875. That thereafter, upon due notice, the Tacoma Land Company made payment for said land and final proof of its right and qualifications to enter and purchase said land under its said application, and plaintiff appeared and submitted evidence to support her alleged homestead entry; that such proceedings were thereafter had upon the issues raised between the
35 Tacoma Land Company and the plaintiff that the rights, claims and interests of said parties were fully tried, considered and finally adjudicated and determined by the General Land Office and upon appeal therefrom by the Secretary of the Interior, against the plaintiff and in favor of the Tacoma Land Company and the alleged homestead entry of the plaintiff was duly cancelled for conflict with the superior right and claim of the Tacoma Land Company, and the cash entry of the land by the Tacoma Land Company allowed and approved for patent, and a patent was thereafter and prior to the commencement of this action duly issued by the United States to the Tacoma Land Company for said land.

Fifth.

That in said contest for said land before the Land Department of the United States, upon the evidence submitted, it was found, adjudicated and determined, as matters of fact, that the Tacoma Land Company made its final proof of its right and qualifications to purchase said land under section 5 of the act of March 3rd, 1887, in all respects as required by the regulations and to the satisfaction of the Land Department; that said land was at the date of the purchase by the Tacoma Land Company within the limits of lands reserved for said railroad company under the withdrawal made by the Land Department, and that such withdrawal and reservation of said land continued until the cancellation thereof by the department in October, 1896; that said Tacoma Land Company was a purchaser of said land in good faith from the railroad company and was qualified to

purchase said land under the act of March 3rd, 1887; that said land was subject to purchase by the Tacoma Land Company upon its application in August, 1897, under the act of March 3rd, 1887; and that said application of the Tacoma Land Company to purchase said land was made within a reasonable time after the passage of said act and the decision of the Land Department that the land was excepted from the railroad grant.

36

Sixth.

That said land was not unappropriated public land subject to plaintiff's attempted entry or settlement thereon within the provisions of the land laws of the United States but said land was in 1897 reserved and appropriated land within the provisions of the acts of Congress and the decisions of the Land Department, and was subject to the preferred and superior right of purchase by the Tacoma Land Company under the act of March 3rd, 1887, and in due and reasonable time after its right of purchase attached to said land the Tacoma Land Company applied to purchase the land under the provisions of the act referred to.

Seventh.

That at no time prior to October, 1896, when the Land Department determined that said land did not pass to the Northern Pacific Railroad Company under its grant but was excepted therefrom, was there any ground or reason for the Tacoma Land Company to apply to purchase said land, but such application prior to October, 1896, would have been premature.

Eighth.

That upon the passage of the act of March 3rd, 1887, referred to the Tacoma Land Company acquired and became vested with a lawful right to purchase said land from the United States, and the plaintiff herein, knowing that the land was claimed to have passed to the railroad company under its grant and having notice and knowledge of the sale of said land to the Tacoma Land Company and conveyance by deed of record, and having notice and knowledge of the rights and title claimed by the Tacoma Land Company and it and its grantees was then in possession of said land, could not and did not initiate any valid or *bona fide* homestead right by her alleged settlement or entry of said land, sufficient to defeat or paramount, to, the right of purchase of the Tacoma Land Company under said act,

37 or at all; and the plaintiff by her attempted entry and settlement on said land acquired no right to said land as against the right or power of the United States to sell and convey said land by its patent therefor.

Ninth.

That in the year 1897 at the times of the alleged entry and settlement by plaintiff, the said land was located within the city limits of

the city of Tacoma as theretofore fixed and established by the city charter of said city of Tacoma, and said land was not under the land laws of the United States subject to the alleged settlement or entry by the plaintiff or to any lawful settlement or entry thereof as a homestead.

Wherefore, these defendants pray that the plaintiff take nothing herein, that they may go hence without day, and have and recover their costs and disbursements herein.

E. R. YORK,
Attorney for Answering Defendants.

STATE OF WASHINGTON, } ss.:
County of Pierce, }

E. R. York being first duly sworn on oath deposes and says: That he is the attorney for the answering defendants herein in the above entitled action; that he has read the foregoing answer and knows the contents thereof, and that he believes the same to be true.

That he makes this verification for the said defendants for the reason that the said defendants are non-residents of and not now within the State of Washington to make the same.

E. R. YORK.

Subscribed and sworn to before me this 6th day of May, 1902.

FRANK ALLYN, JR.,
Notary Public, Residing at Tacoma, Pierce County, State of Washington.

Service by receipt of a copy hereof is admitted this 6th day of May, 1902.

J. W. A. NICHOLS &
JOHN C. STALLCUP,
Attorney- for Plaintiff.

Filed in superior court May 7, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

38 In the Superior Court of the State of Washington in and for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff,
vs.
THE TACOMA LAND COMPANY ET AL., Defendants. } Reply.

Comes now plaintiff and for reply to the affirmative matter set out in defendant's "further and affirmative answer and defense,"

I.

Denies that the land herein in controversy was reserved or withdrawn from sale or entry under the homestead laws as public lands

(as alleged in the first paragraph of said affirmative answer) at any time, or was withdrawn or reserved at all.

II.

Denies that said defendant land company purchased said land in good faith, or ever purchased the same at all, or was ever capable or competent to purchase the same, said lands being at all times public land of the United States.

III.

Denies that said defendant ever went into possession of said land, and in that connection alleges the fact to be that said land was at all times prior to plaintiff's homestead entry, and her occupancy thereunder, wild, vacant and unoccupied land, as found (and necessarily found) by the Land Department when they approved and accepted plaintiff's said homestead entry.

IV.

Plaintiff further denies each and every statement and allegation of said affirmative answer and defense, which are not in harmony with the facts as found by the said Land Department, and set out in the opinions of the honorable Commissioner and Secretary
39 and filed herein.

J. W. A. NICHOLS,
JOHN C. STALLCUP,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

J. W. A. Nichols duly sworn deposes and says that he is one of the attorneys for plaintiff in the foregoing entitled action; that he has read the foregoing reply, knows the statements and allegations thereof and that the same are true as he verily believes and that all of the facts therein recited are within his own knowledge.

J. W. A. NICHOL-.

Subscribed and sworn to before me this 1st day of August, 1902.

E. R. YORK,
Notary Public in and for the State of Washington, Residing at Tacoma.

Copy accepted Aug. 1, 1902.

E. R. YORK,
Att'y for Defendant.

Filed in open court, dept. No. 2, 9 day of Sept. 1902.
ROBERT P. RIGNEY, *Clerk.*
E. N. MURRAY, *Deputy.*

40 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff, vs. TACOMA LAND COMPANY ET AL., Defendants.	No. 18901. Findings of Fact and Conclusions of Law Proposed by Defendants.

The defendants request the court, upon the pleadings and evidence herein, to make the following findings of fact and conclusions of law, in lieu of, so far as in conflict with, the findings and conclusions proposed by the plaintiff:

1st.

That the land involved herein lies within the primary limits of the grant to the Northern Pacific Railroad Company, by joint resolution of Congress of May 31, 1870 (16 Stat. 378) for that portion of its line between Portland and Puget sound and was on December 30, 1874, within the limits of the withdrawal and reservation of lands from sale and entry made by the Land Department of the United States for the benefit of said grant under *with* withdrawal made on its map of general route filed August 13, 1870, and on its map of definite location filed May 14, 1874, and such withdrawal and reservation continued in force and effect until the cancellation of same by the ruling and decision of the Land Department in October, 1896.

Refused and defendants except.

2nd.

That on December 30, 1874, the Tacoma Land Company for value and in good faith, purchased said land from said railroad company, and said railroad company for value and in good faith sold and by its deed conveyed said land as a part of said land grant to the Tacoma Land Company, and said deed was on March 10, 1875, filed for record and recorded in the office of the auditor of Pierce
41 county, Washington, wherein said land was situate; and thereupon and thereunder the Tacoma Land Company entered into and took possession of said land, and thereafter held, and claimed the same and the title thereto until the entry thereon by the plaintiff.

Refused and defendants except.

3rd.

That the Tacoma Land Company was in 1874 and has since been, a citizen of the United States within the meaning and intent of the act of Congress of March 3, 1887 (24 Stat. 556) and as such was

qualified and entitled to perfect its right and title to the land by purchase under the provisions of section 5 of said act.

Refused and defendants except.

4th.

That on October 11, 1897 the Tacoma Land Company made final proof in support of its application to purchase said land under section 5 of said act in full compliance with the requirements of the Land Department, and after full hearing and consideration of the evidence of said company and the plaintiff herein the Land Department allowed said company to purchase said land under its application and proof.

Refused and defendants except.

5th.

That by the ruling and decision of the Land Department no application to purchase by the Tacoma Land Company would have been received or allowed until after the decision of the department in October, 1896 that said land was excepted from the railroad grant, and the cancellation of the withdrawal and reservation of said land for the benefit of said grant.

Refused and defendants except.

6th.

That said land was in 1897 at the times of the settlement and entry thereon by plaintiff, located within the corporate limits of the city of Tacoma as established by the charter of said city.

Refused and defendants except.

E. R. YORK,
Attorney for Defendants.

A copy of foregoing duly served on us this 28 day of August, 1902.

J. W. A. NICHOLS,
JNO. C. STALLCUP,
Attorneys for Pl'ff.

Filed in superior court Oct. 1, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

42 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff,
vs.
TACOMA LAND COMPANY ET AL., Defendants.

No. 18901. Conclusions of Law Requested by the Defendants.

The defendants request the court upon the pleadings and the decisions of the Land Department thereto attached, and upon the facts as found by the court herein, to make and find herein the following:

Conclusions of Law.

1st. That the Tacoma Land Company was in 1874 and has since been a citizen of the United States within the meaning and intent of the act of Congress of March 3, 1887 (24 Stat., 556), and that as such said company was qualified and entitled to purchase land under the provisions of section 5, of said act.

Allowed & pl'ff excepts and exception allowed. Thad Huston, judge.

2nd. That the land involved herein was subject to purchase by the Tacoma Land Company under its application to purchase same, made in August, 1897, under section 5 of said act of Congress.

Refused. Defendants except and exception allowed. Thad Huston, judge.

3rd. That said land was from 1874, until October 1896, withdrawn reserved and appropriated land, within the provisions of the acts of Congress and the decisions of the Land Department of the United States.

Refused. Defendants except and exception allowed. Thad Huston, judge.

4th. That at no time prior to October, 1896, when the Land Department determined that said land did not pass to the railroad company under its grant, but was excepted therefrom, and
43 cancelled the withdrawal and reservation of said land made for the benefit of said land grant, was there any ground or reason for the Tacoma Land Company to apply to purchase the land under said act, but any such application by said company prior to October, 1896, would have been premature and disallowed.

Refused. Defendants except and exceptions allowed. Thad Huston, judge.

5th. That the withdrawal of said land from sale or entry by the Land Department, upon the filing of the railroad map of definite location, operated to withdraw and reserve the land from the public domain and from entry or sale, as between the railroad company and individuals, while such withdrawal remained in force and until

the cancellation thereof by the Land Department in October, 1896, although the land was then held to be excepted from the railroad grant; and said land remained during said time public land under the full control of Congress to be disposed of by it in its *discussion*.

Refused. Defendants except and exception allowed. Thad Huston, judge.

6th. That the order of the Land Department withdrawing the land from private entry, for the benefit of the railroad grant, had the force and effect of a proclamation by the President, within the meaning of section 2258, U. S. Revised Statutes.

Refused. Defendants except and exception allowed. Thad Huston, judge.

7th. That said land at the time of plaintiff's settlement and entry, and at the time of the filing of the application of the Tacoma Land Company to purchase same, was subject to the superior right of purchase by said land company under section 5 of the act of March 3, 1887.

Refused. Defendants except and exception allowed. Thad Huston, judge.

8th. That said land was not at the time of plaintiff's settlement or entry unappropriated public land, or subject to the settlement or entry by plaintiff as a homestead, as provided by sections 2258 and 2289, U. S. Revised Statutes, for the reason that said land was included within the corporate limits of the city of Tacoma.

44

Refused. Defendants except and exception allowed. Thad Huston, judge.

9th. That said land was from 1874 until October 1896, lawfully held by the Tacoma Land Company and its grantees under the deed of conveyance made by the railroad company to it, and thereupon its right of purchase under section 5 of the act of March 3, 1887, attached.

Refused. Defendants except and exception allowed. Thad Huston, judge.

10th. That the Tacoma Land Company was not guilty of laches in delaying its application to purchase said land under section 3 of the act of March 3, 1887 until August 1897, for the reason that its application to purchase was made within one year, and within a reasonable time, after the decision of the Land Department in October, 1896, that the land was excepted from the railroad grant and subject to the provisions of said act.

Refused. Defendant excepts and exception allowed. Thad Huston, judge.

11th. That by the rulings and decision of the Land Department then in force, no application to purchase by the Tacoma Land Company under section 5 of said act would have been received or allowed until after the decision of the Land Department in October, 1896, that the land was excepted from the railroad grant, and the

cancellation of the withdrawal and reservation of said land for the benefit of said land grant.

Refused. Defendant excepts and exception allowed. Thad Huston, judge.

12th. The plaintiff entered upon and improved said land in 1897 with notice and knowledge of the rights and claims of the Tacoma Land Company thereto; and plaintiff could not thereby initiate or acquire any *bona fide* homestead right sufficient to defeat the Tacoma Land Company's right of purchase or the right of the United States to sell and convey said land to said land company.

Refused. Defendant excepts and exception allowed. Thad Huston, judge.

13th. That the defendants are entitled to a decree upon the merits of dismissal of this action.

Refused. Defendants except and exception allowed. Thad Huston, judge.

45 Upon the trial of this cause, defendants offered evidence to prove that at the time plaintiff settled upon and entered the land in controversy in 1897, said land was within the corporate limits of the city of Tacoma. The plaintiff objected to the evidence as irrelevant and immaterial and as not tendered to show any fact subsequent to patent, and as having been passed upon already by the Land Department in accepting plaintiff's home-stead entry.

Objection sustained. Evidence refused and defendants except and exception allowed.

THAD HUSTON, *Judge.*

Filed in superior court Sep. 9, 1902,
ROBERT P. RIGNEY, *Clerk.*

46 In the Superior Court of the State of Washington in and for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff,
vs.
THE TACOMA LAND COMPANY ET AL., Defendants.

Findings of Fact and Conclusions of Law.

The matters and things herein in controversy having been contested before the United States Land Office Departments, and decisions and rulings therein rendered whereby a patent to the land in dispute was granted and issued to the defendant land company:

And this cause having been regularly brought in this court for review of the said rulings and decision- of the said department upon the questions of law involved and having been regularly tried to the court without a jury upon the pleadings filed, and the evidence submitted, and upon the facts as found by the said Land Department as set forth in the opinions herein of the honorable Commis-

sioner of the General Land Office and the honorable Secretary of the Interior and the court being fully advised in the premises, now makes and files the following findings of fact and conclusions of law herein, to-wit:

Findings of Fact.

First. That on the 24th day of February, 1897, the plaintiff, Susan A. Ramsey was a citizen of the United States, over the age of twenty-one years and an unmarried woman, residing in the State of Washington, and was in every respect qualified to take, enter upon and settle upon and improve and acquire title to public lands of the United States under and by virtue of the homestead laws thereof.

Second. That on the said 24th day of February, 1897, the real property herein in controversy was public land of the United
47 States and subject to homestead entry by any qualified person under the homestead laws aforesaid, and that on said date said Susan A. Ramsay, duly entered upon said land, being the south-west quarter of the north-west quarter of section three (3) in township twenty (20) north of range two (2) east of the Willamette meridian, in Pierce county, Washington, and duly entered said land as her homestead in the district land office of the United States at Olympia, Washington in due form under said homestead laws, and paid to the proper officers the fees required by law. And her said homestead entry and application were then and there duly approved and accepted and a certificate of entry of said land accordingly issued by the officers of the said land office and delivered by them to the said Susan A. Ramsay and received and accepted by her.

Third. That in pursuance of her said homestead entry said Ramsay duly entered upon said land on the 31st day of May, 1897, as her homestead, and immediately improved the same by building her house thereon and expended in building, improving and cultivating the said land more than twelve hundred dollars and has ever since lived upon, occupied and used and cultivated the same as her homestead as required by law, and still continues so to do.

Fourth. That on the 25th day of April, 1901, said Ramsay, electing to avail herself of the right to acquire title to said land before the expiration of five years of residence and cultivation thereof, and paying the Government price therefor under section 2301, of the Revised Statutes of the United States, appeared at the said land office at Olympia, and made and filed therein her notice of intention to make final proof of her continuous residence upon and cultivation of the said land for the time required by law and then and there tendered to the receiver of the said land office the Government fee or price for the said land in the sum of one hundred dollars in lawful money of the United States together with the fees of the said register and receiver in like lawful money and then and
48 there tendered to said receiver due proof in usual and legal form of such residence upon and cultivation of said land for more than fourteen months prior to the said time.

Fifth. That the said tender of said Government price of said land and the fees of said officers were refused by the said register and receiver of the said land office for the reason that the plaintiff's said homestead entry had been cancelled by the Land Department of the United States, and that said land had been patented to The Tacoma Land Company, defendant herein.

Sixth. That said patent had been issued to said land company pursuant to an application to purchase said land filed by said land company in the local land office at Olympia, subsequent to plaintiff's homestead entry and location on and improvements of said land as aforesaid, said application being about six months subsequent to the time of plaintiff's said homestead entry, and after plaintiff had entered upon said land and had expended more than twelve hundred dollars in building upon and improving and cultivating the same. That said application to purchase was filed by said land company, claiming the right to purchase under section five, of the act of Congress approved March 3rd, 1887, (24 Statutes at Large 557) as a *bona fide* purchaser of said land from the Northern Pacific Railroad Company, said land being within the limits of the grant to the said railroad company by act of Congress in aid of the construction of said railroad but being excepted from the operation of the said grant, by reason of an existing prior pre-emption filing by one Kincade.

Seventh. That plaintiff now resides upon and ever since her said entry upon said land on May 31st, 1897, has continuously resided upon and cultivated said land as her homestead being a period of more than five years of actual residence upon and cultivation of said land as required by law, and that her said improvements on
49 said land still remain thereon and are of a value of more than twelve hundred dollars.

Eighth. That in a contest before the Land Department of the United States between this plaintiff and the said land company, as to their respective rights arising out of plaintiff's said homestead entry and said land company's said application to purchase under said act of Congress approved March 3rd, 1887, the said department rendered its decision in favor of the said land company, holding that by said act, the said land company was granted the exclusive right to purchase said land, as the *bona fide* grantee of said railroad company, and that by said act the said land was withdrawn and excepted from the public lands of the United States subject to settlement under the homestead laws thereof; and thereupon the said Land Department cancelled plaintiff's said homestead entry and caused a patent to said land to issue to said land company, conveying to it the legal title thereto.

Ninth. That the defendant Tacoma Land Company is a corporation organized under the laws of the State of Pennsylvania.

Tenth. That at the same time and in the same transaction whereby the defendant Tacoma Land Company claims to have purchased the land here in dispute, there was conveyed and sold to the said Tacoma

Land Company by the said Northern Pacific Railroad Company, an amount of land in excess of five thousand acres, towit—about twelve thousand acres, but the number of acres of land held or owned by the Tacoma Land Company at the date of its application to purchase said land in controversy herein is not shown.

And from the foregoing facts, found in harmony with the facts as found by the honorable Commissioner of the General Land Office and the honorable Secretary of the Interior as heretofore stated, the court now finds the following:

Conclusions of Law.

50 First. That the pre-emption filing of Kincade excepted the land in controversy from the grant to the Northen Pacific Railroad Company, and that said railroad acquired no title thereto, and that said land remained public land of the United States.

Second. That in the alleged sale and conveyance of the said land by the said railroad company to the defendant land company, no title passed, and the said land company acquired no title thereto and the same still remained public land.

Third. That the act of March, 3rd, 1887, under which defendant land company claims the right to purchase, conveyed no title in any lands to any person, and said defendant acquired no title to the land in dispute by said act but the same remained public land, of the United States.

Fourth. That the said act was permissive only in its nature and effect, and extended to certain classes of persons therein defined, the right, not theretofore enjoyed by them to acquire by purchase certain classes of public lands, but did not operate to cut off the rights of any other persons otherwise qualified to acquire public lands, of the same class.

Fifth. That the rights so extended by said act could be made available only by compliance with the requirements of the said act, and that failure or refusal to so comply with such requirements left such lands subject to occupation and appropriation, as other public lands, by any qualified person.

Sixth. That the said land company failing and neglecting to comply with the requirements of the said act, and making no application to purchase said land under said act until August, 1897, the plaintiff's homestead entry made in February, 1897, was a lawful and valid entry; and by its neglect and failure to apply for purchase until after plaintiff's said homestead entry, occupancy and improvement, whatever rights of purchase said land company might theretofore have had, were thereby cut off and lost.

51 Seventh. The plaintiff by her homestead entry and her continuous residence and cultivation of, and her improvements on said land, became entitled to purchase the same at the Government price at the time of her application to purchase the

same made at the district land office at Olympia, and the honorable register and receiver erred in refusing to accept plaintiff's said application and proofs and in refusing to allow her to purchase.

Eighth. That plaintiff having now completed more than five years of continuous actual residence upon and cultivation of said land since her said homestead entry, and having improved the same as required by law, during said time, is now fully entitled to have a patent thereto from the United States Government, and to have and enjoy the full title in fee thereto, as a homestead.

Ninth. That the honorable register and receiver of the district land office at Olympia, the honorable Commissioner of the General Land Office and the honorable Secretary of the Interior, erred in holding that the land company's right to purchase was superior to plaintiff's right to homestead said land.

Tenth. The said officers erred in holding that the act of Congress of March 3rd, 1887 gave to the said land company any vested right or title in or to said land.

Eleventh. The said officers erred in accepting the said land company's application to purchase, made after plaintiff's homestead entry of the land and her occupancy, improvement and cultivation thereof.

Twelfth. The said officers erred in holding plaintiff's homestead entry for cancellation in order to accept the land company's application to purchase.

Thirteenth. The said officers erred in rejecting the plaintiff's offer to purchase said land made before her five years of residence
52 upon proper proof of sufficient residence and compliance with other requirements and tender of the proper fees.

Fourteenth. The said officers erred in granting and causing to issue to the said land company a patent to said land.

Fifteenth. That the patent to said land granted and issued to the said land company, conveyed to it the legal title only, and which legal title it now holds in trust for the benefit of the rightful owner thereof, and that the equitable title thereto is and remains in this plaintiff, and that plaintiff is entitled to the legal title to said land, and to have appointed by this court a commissioner to convey to her the legal title thereto.

Sixteenth. The court further finds that the failure and delay of the land company to apply for the purchase of said land after the approval of the act of March 3rd, 1887, until August, 1897, a period of more than ten years was such laches as to estop said land company from contesting plaintiff's rights under her homestead entry, made months before such application.

Seventeenth. The court further finds that the defendants herein other that the said land company, and claiming an interest in or title to said land as the grantees or successors in interest of said land company, are without right, title or interest therein, and all deeds and conveyances purporting to convey any title or interest in or to said land from said land company to said grantees were and

are ineffectual to pass any title or interest whatever, and are void as against the rights of this plaintiff; and plaintiff is entitled to a decree of this court, quieting her title as against any and all claims of said defendants of title or interest from or through said land company, and is entitled to the judgment and decree of this court according to the prayer of her complaint.

The foregoing findings of fact and conclusions of law are now made and filed in this cause by the court this 9th day of
53 September, 1902.

THAD HUSTON, *Judge.*

And the plaintiff requests the court to find in addition to the foregoing, the following conclusions of law, to-wit:

Eighteenth. That the said land company being a corporation, is not a citizen of the United States within the meaning of the act of March 3rd, 1887, under which said company claims the right to purchase.

Nineteenth. That the said land company having purchased in excess of five thousand acres of land prior to March 3d, 1887, and not having been organized for the construction or operation of railways, canals or turn pikes, by an act of Congress approved on said same date of March 3d, 1887 (sec. 3, chap. 340, p. 447, Statutes at Large) was prohibited from thereafter acquiring, holding or owning further land in the Territory of Washington, and that the subsequent establishment of the State government did not operate to confer upon said land company any right to purchase said land;

And plaintiff's said request for said additional conclusions of law, numbered eighteenth and nineteenth, the court now refuses and to the court's said refusal, plaintiff duly excepts and her exception is allowed.

THAD HUSTON, *Judge.*

A copy of foregoing findings and conclusions received this Aug. 26th. 1902.

E. R. YORK,
Att'y for Defendants.

Filed in open court, dep't No. 2, 9 day of Sept. 1902.

ROBERT P. RIGNEY, *Clerk.*
E. N. MURRAY, *Deputy.*

54 In the Superior Court of the State of Washington in and for the State of Washington.

SUSAN A. RAMSEY, Plaintiff,
vs.
TACOMA LAND COMPANY ET AL., Defendants.
} Order of Dismissal. No. 1890[illegible].

On motion of plaintiff for an order of dismissal as to the defendant herein Frank J. Aldrich, receiver of the Tacoma national bank, and it appearing to the court that said defendant has never been served with summons or any process herein and has made no appearance herein, the said motion is granted and the said defendant Frank J. Aldrich, receiver, is hereby dismissed from this action.

THAD HUSTON, *Judge.*

Entered Jour. 85, dep't 2, page 581, Sept. 9, 1902.
Filed in open court, dep't No. 2, 9 day of Sept. 1902.

ROBERT P. RIGNEY, *Clerk.*
E. N. MURRAY, *Deputy.*

55 In the Superior Court of the State of Washington in and for Pierce County.

SUSAN A. RAMSEY, Plaintiff,
vs.
THE TACOMA LAND COMPANY, A Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustees for the Estate of Charles B. Wright, Deceased, and Frank J. Aldrich, Receiver of the Tacoma National Bank, Defendants.
} No. 18901. Judgment and Decree.

This cause having been tried to the court without a jury upon the pleadings filed the opinions and rulings of the honorable Commissioner of the General Land Office and of the honorable Secretary of the Interior upon the facts and the law relative to the issues herein as tried and determined by them, and the evidence adduced herein, the plaintiff being represented by her attorneys, J. W. A. Nichols and John C. Stallcup and the defendants The Tacoma Land Company and The Philadelphia Trust Safe Deposit and Insurance Company and John C. Bullitt trustees for the estate of Charles B. Wright, deceased, being represented by their attorney E. R. York, and the court having heard the arguments of counsel and having

fully considered all the matters and things pertaining hereto, and being fully advised in the premises, and having heretofore made and filed herein, its findings of fact and conclusions of law as by law required now on motion of plaintiff's attorneys, it is by the court ordered, adjudged and decreed:—

That the plaintiff Susan A. Ramsey is the owner of the equitable title and is entitled to have a full conveyance of the legal title to the land herein in controversy, to-wit: the south west quarter of the north west quarter (S. W. ¼ of the N. W. ¼) of section three (3) in township (20) north of range two (2) east of the Willamette meridian, all in Pierce county, Washington.

56 That the defendant, The Tacoma Land Company never had or acquired any right, title or interest in or to the said land as against the said plaintiff prior to the receipt by it of the United States patent to said land, and by receiving and accepting said patent the said land company became and remains the trustees of the said plaintiff, holding the legal title to said land for plaintiff's benefit.

That the estate of Charles B. Wright and the Philadelphia Trust Safe Deposit and Insurance Company and John C. Bullitt, trustees of said estate, never acquired and do not hold any right, title or interest in or to said land by mesne conveyance from the Tacoma Land Company, or at all, and all deeds, mortgages and all conveyances by or from the said land company or through or under it, purporting to convey said land or any interest therein, to said defendants or at all, are void, and constitute a cloud upon plaintiff's title to said land.

That the defendant Tacoma Land Company be and it is hereby divested of all title to said land, and plaintiff Susan A. Ramsey, is hereby vested, with the full legal title, as well as the equitable title thereto.

And it is further ordered, that the defendant The Tacoma Land Company make and execute to the plaintiff Susan A. Ramsey a formal deed of conveyance of the said land, and deliver the same to the clerk of this court for plaintiff's benefit within thirty days from the date of the entry of this decree; and in default thereof the said clerk is hereby appointed a commissioner, with full power and authority, and is hereby directed to make execute and deliver to plaintiff a deed, conveying all the right, title and interest of the said Tacoma Land Company in and to said land to the said plaintiff.

It is further ordered that the said defendants The Tacoma Land Company and The Estate of Charles B. Wright and The Phil-

57 adelphia Trust, Safe Deposit and Insurance Company and John C. Bullitt as trustees of said estate be and they are hereby restrained and enjoined from asserting or attempting to assert any right, title, interest or claim in or to said land adverse to this plaintiff, and plaintiff's title to said land be and is hereby quieted as against any and all interests or claims of said defendants

or any of them. That plaintiff have judgment against defendants and each of them for costs.

Done in open court this 15th day of September, 1902.

THAD HUSTON, *Judge.*

Received copy Sept. 9th, 1902.

E. R. YORK,
Att'y for Defendants.

Ent. Jour. 85, dep't 2, page 595, Sept. 15, 1902.
Entered Ex. Doc. No. 21, page 50.

Filed in superior court, Sep. 15, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

58 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff, *vs.* THE TACOMA LAND COMPANY, a Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustees for the Estate of Charles B. Wright, Deceased, Defendants.	No. 18901.	Notice of Appeal.

To the plaintiff, Susan A. Ramsey, and to Messrs. Jno. C. Stallcup and J. W. A. Nichols, her attorneys:

You will please take notice, that the defendants in the above entitled cause, above named, hereby appeal to the supreme court of the State of Washington from the judgment and decree made and entered in this action by said superior court on or about the 15th day of September, 1902, wherein and whereby said superior court rendered its judgment and decree in favor of the plaintiff and against said defendants, and said defendants appeal from the whole of said judgment and decree.

Dated, Tacoma, Washington, this 14th day of October, 1902.

E. R. YORK,
Attorney for Defendants.

Due service of the foregoing notice of appeal by the receipt of a true copy of said notice, is hereby admitted, this 14th day of October, 1902.

J. W. A. NICHOLS,
JOHN C. STALLCUP,
Attorneys for Plaintiff.

Entered Jour. 89, dep't 2, page 62, Oct. 14, 1902.
Filed in superior court Oct. 14, 1902.
ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Dep.*

Entered Ex. Doc. No. 21, page 50.

59 In the Superior Court of the State of Washington for Pierce County.

SUSAN A. RAMSEY, Plaintiff, *vs.* THE TACOMA LAND CO., PHILADELPHIA Trust, Safe Deposit & Insurance Co., and John C. Bullet, Trustees of the Estate of C. B. Wright, Deceased, Defendants.	No. 18901. Appeal Bond.

Know all men by these presents, that we, Philadelphia Trust Safe Deposit & Insurance Co. and John C. Bullet, trustees for the estate of C. B. Wright, deceased as principals, and the United States Fidelity & Guaranty Co., a corporation, as surety, are held and firmly bound unto Susan A. Ramsey in the sum of two hundred ($200.00) dollars for the payment of which sum, well and truly to be made we bind our heirs, assigns and personal representatives firmly by these presents.

Witness our hands and seals this 13th day of October, A. D. 1902.

The conditions of this obligation are such that whereas the above named defendants have appealed from a judgment made and entered in the above named court on the 15th day of September, 1902, against said defendants, now, therefore if the said Philadelphia Trust Safe Deposit & Insurance Co., and John C. Bullit as trustees for the estate of C. B. Wright, deceased, shall pay all costs and damages that may be awarded against them upon said appeal or upon the dismissal thereof, not exceeding two hundred ($200.00) dollars, then this obligation to become void, otherwise to remain in full force and effect.

THE TACOMA LAND COMPANY,
PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY, AND
JOHN C. BULLIT,
Trustees of the Estate of C. B. Wright, Deceased,
By E. R. YORK, *Their Attorney.*
[CORPORATE SEAL.]
THE UNITED STATES FIDELITY & GUARANTY CO.,
By FRANK ALLYN, *Its Local Attorney.*
FRANK ALLYN, JR., *Its Local Agent.*

Witnesses:

____ ____.
____ ____.

Due service of the foregoing bond by receipt of a true copy of same is hereby admitted, this 14th day of October, 1902.

J. W. A. NICHOLS AND
JOHN C. STALLCUP,
Attorneys for Plaintiff, Susan A. Ramsey.

Filed in superior court, Oct. 14, 1902.

ROBERT P. RIGNEY, *Clerk.*
E. E. WHITE, *Deputy.*

Entered Ex. Doc. No. 21, page 50.
Entered Book of Bonds "I," page —, Oct. 14, 1902.

STATE OF WASHINGTON, } ss:
County of Pierce, }

I, Robert P. Rigney, clerk of the Pierce county superior court, do hereby certify that the annexed and foregoing is a full, true and correct transcript of so much of the record and files in the above entitled action as I have been directed by the appellant to transmit to the supreme court.

In witness whereof I have hereunto set my hand and affixed the seal of said superior court this 22nd. day of October, 1902.

[Seal of Superior Court.]

ROBERT P. RIGNEY,
Clerk of said Court.

In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff,
vs.
THE TACOMA LAND COMPANY ET AL., Defendants. } No. 18901. Affidavit.

STATE OF WASHINGTON, } ss:
County of Pierce, }

E. R. York being first duly sworn on his oath says: That he is the attorney for the defendants in the above entitled cause that the proposed bill of exceptions of the defendants in this cause was prepared by him, and was filed in this court and thereafter served upon the plaintiff by delivery of a copy thereof to her attorney, J. W. A. Nichols, on the 30th day of September, 1902. That ten days after such filing and service of said proposed bill of exceptions *has* fully expired and that no amendments to said bill of exceptions proposed by the defendants, and as now on file herein, have been proposed by

the plaintiff or her attorneys or served upon the defendants, or their attorney, or filed herein.

E. R. YORK.

Subscribed and sworn to before me this 11th day of October, 1902.

THOS. D. HITCHCOCK,
Notary Public, Residing at Tacoma, Washington.

Entered App. Doc. No. —, page —.

Endorsement: Filed in superior court. Oct. 11 1902. Robert P. Rigney, clerk, by Peter David, dep.

63 In the Superior Court of the State of Washington for the County of Pierce.

SUSAN A. RAMSEY, Plaintiff, vs. THE TACOMA LAND COMPANY, a Corporation; Philadelphia Trust, Safe Deposit and Insurance Company, a Corporation, and John C. Bullitt, Trustees for the Estate of Charles B. Wright, Deceased, Defendants.	No. 18,901. Bill of Exceptions.

Be it remembered, that this cause came on regularly to be heard on the 29th day of April, 1902, upon the demurrer of the defendants to the amended bill of complaint of the plaintiff which is included in and a part of the record in this cause; and for grounds of demurrer to said amended complaint the defendants alleged:

1st. That said amended complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them, nor to entitle the plaintiff to the relief prayed for, or any relief against these defendants, or any of them.

2nd. That the rights and claims of the plaintiff alleged in her amended complaint herein have been fully adjudicated between the plaintiff and said defendants and finally determined adversely to the plaintiff by the Land Department of the United States, having jurisdiction thereof.

3rd. That this court has no jurisdiction of the subject matter of this action.

That after argument upon said demurrer by the attorneys for the plaintiff and defendants, the court made and entered an order overruling said demurrer. To which ruling and order the defendants then and there excepted, and their exception was allowed.

That thereafter on May 7th, 1902, the defendants duly served and filed herein their answer to said amended complaint; and on August 1, 1902, the plaintiff served and filed herein her reply to said answer.

Entered App. Doc. No. —. Page —.

64 This cause was thereupon regularly brought on for trial before the court, without a jury, on the 9th day of September, 1902. Upon motion of the plaintiff, an order was duly made and entered dismissing from this cause the defendant, Frank J. Aldrich, receiver of the Tacoma national bank.

The plaintiff then tendered evidence to prove her continuous residence upon and cultivation of the land involved herein since May 31, 1897, that the improvements made are still on the land and of the value of $1200 and to prove the matters alleged in paragraphs VIII and IX of her amended complaint; and the defendants thereupon in open court waived and withdrew their denials thereof, and admitted the same to be true. The plaintiff thereupon rested her case.

The defendants then offered evidence to prove by the charter and ordinances and action thereon of the city of Tacoma that prior to and at the time plaintiff settled upon and entered the land in controversy at the land office in 1897, said land was within the corporate limits of the city of Tacoma. The plaintiff objected to the evidence as irrelevant and immaterial and as not tendered to show any fact subsequent to the patent and as having been passed upon already by the Land Department in accepting plaintiff's homestead entry. The court sustained the objection, and refused to admit the testimony. To which ruling and order the defendants then and there excepted, and their exception was allowed.

The defendants then rested their case upon the pleadings and evidence and decisions of the Land Department herein.

And thereupon the defendants requested the court to make the following findings of fact, to-wit:

1st. That the land involved herein lies within the primary limits of the grant to the Northern Pacific Railroad Company by joint resolution of Congress of May 31, 1870 (16 Stat., 378) for that portion of its line between Portland and Puget sound, and was on December 30, 1874, within the limits of the withdrawal and reser-

65 vation of lands from sale and entry made by the Land Department of the United States for the benefit of said grant under its withdrawal made on its map of general route filed August 13, 1870, and on its map of definite location filed May 14, 1874, and such withdrawal and reservation continued in force and effect until the cancellation of same by the ruling and decision of the Land Department in October, 1896.

Which finding of fact the court refused to make, and the defendants then and there excepted, and their exception was allowed.

2nd. That on December 30, 1874, the Tacoma Land Company, for value and in good faith, purchased said land from said railroad company, and said railroad company, for value and in good faith, sold and by its deed conveyed said land as a part of said land grant to the Tacoma Land Company, and said deed was on March 10, 1875, filed for record and recorded in the office of the auditor of Pierce county, Washington, wherein said land was situate; and

thereupon and thereunder the Tacoma Land Company entered into and took possession of said land, and thereafter held and claimed the same and the title thereto until the entry thereon by the plaintiff.

Which finding of fact the court refused to make, and the defendants then and there excepted, and their exception was allowed.

3rd. That on October 11th, 1897, the Tacoma Land Company made final proof in support of its application to purchase said land under section 5 of said act, in full compliance with the requirements of the Land Department, and after full hearing and consideration of the evidence of said company and the plaintiff herein the Land Department allowed said company to purchase said land under its application and proof.

Which finding of fact the court refused to make, and the defendants then and there excepted, and their exception was allowed.

4th. That by the ruling and decision of the Land Department, no application to purchase by the Tacoma Land Company would have been received or allowed until after the decision of the department in October, 1896, that said land was excepted from the railroad grant and the cancellation of the withdrawal and reservation of said land for the benefit of said grant.

Which finding of fact the court refused to make, and the defendants then and there excepted, and their exception was allowed.

66 5th. That said land was in 1897, at the times of the settlement and entry thereon by plaintiff, located within the corporate limits of the city of Tacoma as established by the charter of said city.

Which finding of fact the court refused to make, and the defendants then and there excepted, and their exception was allowed.

And the court thereupon, at the request of the plaintiff, made and signed and filed herein the findings of fact proposed by the plaintiff, numbered first to tenth, inclusive, as now on file and a part of the record in this cause.

And the defendants then and there excepted to the second finding of fact so made, and their exception was allowed.

The defendants thereupon requested the court, upon the pleading and evidence and findings of fact so made, to make and find the following conclusions of law, to-wit:

1st. That the Tacoma Land Company was in 1874, and has since been, a citizen of the United States within the meaning and intent of the act of Congress of March 3, 1887, (24 Stat., 556), and that, as such, said company was qualified and entitled to purchase land under the provisions of section 5 of said act.

Which conclusion of law the court allowed and made, and the plaintiff then and there excepted, and her exception was allowed.

2nd. That the land involved herein was subject to purchase by the Tacoma Land Company under its application to purchase same, made in August, 1897, under section 5 of said act of Congress.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

67 3rd. That said land was from 1874 until October, 1896, withdrawn, reserved, and appropriated land, within the provisions of the acts of Congress and the decisions of the Land Department of the United States.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

4th. That at no time prior to October, 1896, when the Land Department determined that said land did not pass to the railroad company under its grant, but was excepted therefrom, and cancelled the withdrawal and reservation of said land made for the benefit of said land grant, was there any ground or reason for the Tacoma Land Company to apply to purchase the land under said act, but any such application by said company prior to October, 1896, would have been premature and disallowed.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

5th. That the withdrawal of said land from sale or entry by the Land Department, upon the filing of the railroad map of definite location, operated to withdraw and reserve the land from the public domain and from entry or sale as between the railroad company and individuals, while such withdrawal remained in force and effect until the cancellation thereof by the Land Department in October, 1896, although the land was then held to be excepted from the railroad grant; and said land remained during said time public land under the full control of Congress to be disposed of by it in its discretion.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

6th. That the order of the Land Department withdrawing the land from private entry, for the benefit of the railroad grant, had the force and effect of a proclamation by the President, within the meaning of section 2258 U. S. Revised Statutes.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

7th. That said land, at the time of plaintiff's settlement and entry, and at the time of the filing of the application of the Tacoma Land Company to purchase same, was subject to the superior right of purchase by said land company under section 5 of the act of March 3, 1887.

Which conclusion of law the court refused to make and the defendants then and there excepted, and their exception was allowed.

68 8th. That said land was not, at the *the* time of plaintiff's settlement or entry, unappropriated public land, or subject to the settlement or entry by plaintiff as a homestead, as provided by sections 2258 and 2289, U. S. Revised Statutes, for the reason that

said land was included within the corporate limits of the city of Tacoma.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

9th. That said land was from 1874 until October, 1896, lawfully held by the Tacoma Land Company and its grantees under the deed of conveyance made by the railroad company to it, and thereupon its right of purchase under section 5 of the act of March 3, 1887 attached.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

10th. That the Tacoma Land Company was not guilty of laches in delaying its application to purchase said land under section 5 of the act of March 3, 1887, until August, 1897, for the reason that its application to purchase was made within one year, and within a reasonable time, after the decision of the Land Department in October, 1896, that the land was excepted from the railroad grant and subject to the provisions of said grant.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

11th. That by the rulings and decision of the Land Department then in force, no application to purchase by the Tacoma Land Company under section 5 of said act would have been received or allowed until after the decision of the Land Department in October, 1896, that the land was excepted from the railroad grant, and the cancellation of the withdrawal and reservation of said land for the benefit of said land grant.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

12th. That plaintiff entered upon and improved said land in 1897 with notice and knowledge of the rights and claims of the Tacoma Land Company thereto; and plaintiff could not thereby initiate or acquire any *bona fide* homestead right sufficient to defeat the Tacoma Land Company's right of purchase, or the right of the United States to sell and convey said land to said land company.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

69 13th. That the defendants are entitled to a decree upon the merits of dismissal of this action.

Which conclusion of law the court refused to make, and the defendants then and there excepted, and their exception was allowed.

And thereupon, at the request of the plaintiff, and upon the facts as determined by the Land Department as set forth in the pleadings, and upon the findings of fact based thereon as made by the court, the court made and filed herein its conclusions of law numbered first to seventeenth, inclusive, as now on file and a part of the record in this cause.

And the defendants then and there excepted to each and all of said conclusions of law numbered first to seventeenth, inclusive, as

so made and filed by the court, and their exceptions thereto were allowed.

And thereafter on the 15th day of September, 1902, upon the motion of the plaintiff, by her attorneys, and in the absence of the defendants and their attorney, the court made, signed, and filed its judgment and decree herein in favor of the plaintiff and against said defendants, as now on file and a part of the record in this cause.

To which judgment and decree, and the whole thereof, the defendants excepted, and their exception was allowed.

And the foregoing bill of exceptions of the defendants in this cause is hereby signed, settled, and allowed, this 11th day of October, 1902.

THAD HUSTON,
Judge of said Court.

70 *Certificate.*

STATE OF WASHINGTON, } *ss:*
County of Pierce, }

I, Thad Huston, do hereby certify:

That I am a duly elected, qualified and commissioned judge of the superior court of the State of Washington for the county of Pierce, and the judge of the court in which the within entitled action was pending, and by and before whom the same was tried.

That the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause, and are hereby made a part of the record therein; and said bill of exceptions contains all the material facts, matters, and proceedings heretofore occurring in said cause and not already a part of the record therein.

In witness whereof, I have hereunto set my hand on this 11th day of October, A. D. 1902.

THAD HUSTON,
Judge of the Superior Court of the State of Washington for the County of Pierce.

Endorsement: No. 18,901. Susan A. Ramsey, plaintiff, *vs.* The Tacoma Land Co. *et al.*, defendant-. Bill of exceptions. Service by receipt of a copy hereof is admitted this 30th. day of September, 1902. J. W. A. Nichols, John C. Stallcup, attorneys for plaintiff. Filed in superior court Sep. 30 1902, Robert P. Rigney, clerk, E. E. White, dep. E. R. York, attorney at law, Fidelity building, Tacoma, Washington, attorney for defendant.

71 SUSAN A. RAMSEY, Respondent, v. THE TACOMA LAND COMPANY ET AL., Appellants. } No. 4532½. Filed March 20th, 1903.

The respondent brought this action in the court below and prayed that she be decreed to be the owner of the southwest quarter of the northwest quarter of section 3, township 20, north of range 2, E., W. M., situate in Pierce county, Washington, and that defendants be decreed trustees of the title for the use of respondent. A decree was entered as prayed and defendants appeal.

A motion is made to dismiss the appeal because certain of the appellants failed to execute the bond on appeal, and because the notice of appeal was not served on certain of the defendants. We find that the notice of appeal was given by all the defendants by their attorney, and the bond was executed on behalf of all, also by their attorney. The motion is therefore denied.

The facts in the case are not disputed and are substantially as follows: The land in question is located within the primary limits of the land grant made to the Northern Pacific Railroad Company by joint resolution of Congress of May 31, 1870. The railroad company, on August 13, 1870, filed its map of general route and on May 14, 1874, filed its map of definite location in the office of the Secretary of the Interior. Pursuant thereto the Land Department of the United States withdrew and reserved from sale and entry the odd numbered sections of land within the limits of the grant, including the land in question. Prior to the grant and on May 19, 1869, one W. C. Kincade had made a pre-emption filing on the land, but had abondoned the filing and the land prior to the act of 1870. Subsequent to the filing of the map of definite location the land was held by the railroad company and considered by the Land Department
72 to have passed to the railroad company by the grant, until the departmental decision of July 13, 1896, in Corliss *v.* Northern Pacific R. R. Co., which held that lands of this character were excepted from the grant. In 1874 the Northern Pacific Railroad Company, for value and in good faith, sold and conveyed the land to the Tacoma Land Company, a corporation, and *bona fide* purchaser for value. Thereafter the Tacoma Land Company, for value and in good faith, sold the land to the other appellants herein, who also purchased in good faith and for value. On October 13, 1896, the Commissioner of the General Land Office of the United States by letter of that date, on the basis of the decision in Corliss *v.* Northern Pacific R. R. Co., cancelled the railroad company's list of the land in question. On February 24, 1897, the respondent filed in the local land office her application to enter the land as a homestead, the filing was accepted and, in May, 1897, she went upon the land where she has since remained and made improvements thereon to the value of $1200. In August, 1897, the Tacoma Land Com-

pany filed its application in the local land office to purchase the land under section 5 of the act of Congress of March 3, 1887. The respondent contested the right of the Tacoma Land Company to purchase, and the local office upon a hearing decided in favor of the land company and awarded the land to the said company. An appeal was taken from the decision to the Commissioner of the General Land Office and thereafter to the Secretary of the Interior, and each of these departments affirmed the decision of the local land office. On October 4, 1900, the homestead entry of respondent was cancelled and on February 20, 1901, a patent for the land was issued by the United States to the Tacoma Land Company. No fraud or imposition is alleged or claimed in this case. The only question in the case is whether or not the Land Department of the United States has properly construed section 5 of the act of Congress approved March 3, 1887—24 U. S. Stat. at Large, p. 557—as giving to the Tacoma Land Company a preference right to purchase the land in question over the respondent, who, with knowledge of the
73 rights of appellants, had filed on the land prior to the application of the land company to purchase. Section 5 of the act is as follows:

"That where any said company shall have sold to the citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to said *bona fide* purchaser, his heirs or assigns."

In Wiseman *v.* Eastman, 21 Wash. 163, this court held that, where the charge is mistake or misconstruction of law by the Land Department, the courts will not set aside a patent or declare a trust in lands unless such mistake or misconstruction is clearly manifest. In United States *v.* Winona Railway Co., 165 U. S., 463, the Supreme Court of the United States, in construing the section in question said:

"Section 5 of the same act applies to cases in which no certification or patent has issued, and yet the lands sold by the railroad company are the numbered sections prescribed in its grant, and coterminous with the constructed portions of its road; and it is there provided that, where the lands so sold by the company 'are for any reason excepted from the operation of the grant to said company,' the purchaser may obtain title directly from the Government by paying to it the ordinary Government price of such lands. It is true the term used here is '*bona fide* purchase,' but it is a *bona fide* purchaser from the company, and the description given of the lands, as not conveyed and 'for that reason excepted from the operation of

the grant,' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one, who, if not in the fullest terms a '*bona fide* purchaser,' has, nevertheless, purchased in good faith from the railroad company. * * * Our conclusion is that these acts operate to confirm the title of every purchaser from a railroad company of lands certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the Land Department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits of the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing also, that the lands were public lands, in the statutory sense of the term, and free from individual or other claims."

It seems that the facts in this case bring the appellant strictly within the letter and spirit of that statute as above construed. This land had been sold by the Northern Pacific Railroad Com-
74 pany as part of its grant. The Tacoma Land Company, for value and in good faith, became the purchaser. The land was in an odd numbered section and coterminous with the constructed part of the company's road. The land was excepted from the grant by reason of the fact that Kincade had filed a pre-emption thereon prior to the grant. But, prior to the passage of the resolution of 1870 Kincade had abandoned his filing and the possession of the land, and never returned to claim the same. Prior to 1896 the land had been treated by the railroad company and the Land Department as belonging to the railroad company, and while so treated was purchased by the Tacoma Land Company and the other appellants, and, while the deeds of the purchasers were on file in the county where the lands are situated, and within four months after the Land Department had notified the local land office that the enlistment of the land by the railroad company had been cancelled, the respondent filed on the land. Under these circumstances the local land office had no right to accept the filing of respondent and thereby terminates the right of appellants to purchase under section 5 of the act of 1887, above quoted. We are satisfied that the appellants had a preference right to purchase within a reasonable time and that the Land Department correctly construed the law in so holding.

It is argued by respondent that the Tacoma Land Company, which is a corporation under the laws of the State of Pennsylvania, is not a citizen of the United States within the meaning of the statute, and is for that reason not entitled to purchase under section 5 of the act of 1887. This question, we think, was settled against respondent'

contention in United States *v.* Northwestern Express Stage & Transportation Co., 164 U. S. 686.

For these reasons the judgment of the lower court is reversed and the cause dismissed.

MOUNT, *J.*

We concur:

FULLERTON, *C. J.*
HADLEY, *J.*
DUNBAR, *J.*
ANDERS, *J.*

Endorsement: Filed Mar. 20 1903 C. S. Reinhart, clerk, F. S. Guyot, dep.

75 In the Supreme Court of the State of Washington, Monday, May 4th, 1903.

SUSAN A. RAMSEY, Respondent,
vs.
THE TACOMA LAND COMPANY ET AL., Appellant. } No. 4532½.

This cause having been heretofore submitted to the court upon the transcript of the record of the superior court of Pierce county and upon argument of counsel and the court having fully considered the same and being fully advised in the premises and having filed its opinion in writing it is now on this 4th day of May, A. D. 1903 on motion of E. R. York Esquire of counsel for appellant considered adjudged and decreed that the judgment of the said superior court be and the same is hereby reversed with costs the petition for rehearing denied and that the said The Tacoma Land Company *et al.* appellants have and recover of and from the said Susan A. Ramsay the costs of this action taxed and allowed at ninety-nine & 90/100 dollars and that execution issue therefore. And it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed.

76 In the Supreme Court of the State of Washington.

SUSAN A. RAMSAY, Respondent,
vs.
THE TACOMA LAND COMPANY, PHILADELPHIA Trust, Safe Deposit & Insurance Company, and John C. Bullitt, Trustees of the Estate of Charles B. Wright, Deceased, Respondents.

No. 4532½. Petition for Writ of Error.

To the honorable chief justice of the supreme court of the State of Washington:

Your petitioner, Susan A. Ramsay, plaintiff and respondent in the above entitled action respectfully shows:—

That in the above entitled cause, in this court, on the — day of ——, 1903, final judgment was rendered, filed and entered, reversing the judgment of the superior court of Pierce county, which had been given in this petitioner's favor, and dismissing this petitioner's action, and awarding costs against her. That said final judgment was and is greatly to the prejudice and injury of your petitioner, and was and is erroneous in many particulars; that in said action there was drawn in question certain rights and privileges, claimed by this petitioner under the laws of the United States, and the said decision and judgment was against the rights and privileges so claimed under said laws, and that by the construction of the laws and statutes of the United States in said decision and judgment set out, the rights of petitioner so claimed, are lost.

Wherefore, that petitioner may obtain relief and have opportunity to show the errors complained of, your petitioner prays that she be allowed a writ of error, that a bond be fixed and approved, and that said cause be transmitted to the Supreme Court of the United States, at Washington, to determine said errors, and that all proper orders herein be made to that end. And your petitioner will ever pray.

J. W. A. NICHOLS,
Attorney for Petitioner.

Endorsement: 4532½. Supreme court State of Washington. Petition for writ of error. Filed Aug. 10, 1903. C. S. Reinhart, clerk. F. S. Guyot, dep. J. W. A. Nichols att'y for petitioner.

77 In the Supreme Court of the State of Washington.

SUSAN A. RAMSAY, Respondent, vs. THE TACOMA LAND COMPANY, PHILADELPHIA Trust, Safe Deposit & Insurance Company, and John C. Bullit, Trustees of the Estate of Charles B. Wright, Deceased, Appellants.	No. 4532½. Order Allowing Writ of Error.

Now on this 10th day of August, 1903, on reading and consideration of the petition of Susan A. Ramsay, praying the allowance of a writ of error from the Supreme Court of the United States to this, the supreme court of the State of Washington, for the reversal of the judgment heretofore rendered in this cause and entered by this said supreme court of the State of Washington, and it appearing that this is a proper case for the allowance of such writ, that in rendering said judgment certain Federal statutes were necessarily construed, and that under the construction given, the rights claimed by said Ramsay were denied, it is therefore ordered: That a writ of error be and the same is hereby allowed; that the said Susan A. Ramsay execute to the said defendants a bond for costs as required by law, in the sum of five hundred dollars to be approved — the undersigned, chief justice of the supreme court of the State of Washington, and that thereupon a citation duly issue, and the record herein be duly sent up to the Supreme Court of the United States for such action as shall therein be determined.

Dated, this 10th. day of August, 1903.

MARK A. FULLERTON,
Chief Justice of the Supreme Court of the State of Washington.

Endorsement: 4532½. Supreme court State of Washington. Order for writ of error. Filed Aug. 10 1903. C. S. Reinhart, clerk. F. S. Guyot, dep.

78 In the Supreme Court of the State of Washington.

SUSAN A. RAMSEY, Respondent, vs. THE TACOMA LAND COMPANY, PHILADELPHIA Trust, Safe Deposit & Insurance Company, and John C. Bullitt, Trustees of the Estate of Charles B. Wright, Deceased, Appellants.	No. 4532½. Bond for Writ of Error.

Know all men by these presents, that Susan A. Ramsay as principal, and, J. C. Donaway and W. P. Lawrence as surety, are held and firmly bound unto the Tacoma Land Company; and Philadelphia

Trust Safe Deposit & Insurance Company and John C. Bullit, trustees of the estate of Charles B. Wright, deceased, defendants above named in the sum of five hundred dollars, for the payment whereof to the said defendants, we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th. day of August, 1903.

The condition of the above obligation is such that whereas the said Susan A. Ramsay has sued out a writ of error from the Supreme Court of the United States to the supreme court of the State of Washington, for the reversal of the judgment heretofore rendered by the said supreme court of the State of Washington in the above entitled cause, now therefore, if the said Susan A. Ramsay shall prosecute her said writ of error to effect and shall answer all costs if she shall fail to make good her plea, then this obligation to be void; otherwise to be and remain in full force and effect.

SUSAN A. RAMSEY.
J. C. DONAWAY.
W. P. LAWRENCE.

79 STATE OF WASHINGTON, } ss:
County of Pierce, }

J. C. Donaway and W. P. Lawrence first duly sworn, each for himself and not for the other, on his oath deposes and says: That he is a citizen and resident of the United States and of the State of Washington, and of the county of Pierce;—that he is one of the sureties named in and whose signature is affixed to the foregoing bond for a writ of error;—and that he is worth the sum named therein, to-wit, the sum of five hundred dollars, in property situate in said county of Pierce, over and above all debts and liabilities, and property exempt from execution.

J. C. DONAWAY.
W. P. LAWRENCE.

Subscribed and sworn to before me this 13th day of August, 1903.

[NOTARIAL SEAL.] J. W. A. NICHOLS,
Notary Public in and for the State of Washington, Residing at Tacoma.

Approved Aug. — 1903.

MARK A. FULLERTON,
Chief Justice Supreme Court of the State of Washington.

Endorsement: 4532½. Ramsay *vs.* Tacoma Land Company *et al.* Bond for writ of error. Received copy Aug. 15, 1903, E. R. York, att'y for defendants in error. Filed Sep. 5, 1903. C. S. Reinhart, clerk.

80 In the Supreme Court of the State of Washington.

SUSAN A. RAMSAY, Respondent, Plaintiff in Error, vs. TACOMA LAND COMPANY and PHILADELPHIA Trust, Safe Deposit & Insurance Company and John C. Bullitt, Trustees of the Estate of Charles B. Wright, Deceased, Appellants, Defendants in Error.	No. 4532½. Assignment of Errors.

The said Susan A. Ramsay, plaintiff above named, complains of the said defendants for that the said defendants recovered judgment in the supreme court of the State of Washington at the January term of said court A. D. 1903, against this plaintiff, reversing the judgment of the superior court of the State of Washington for Pierce county, and dismissing this plaintiff's cause of action, and rendering judgment against plaintiff for costs; and plaintiff alleges that in the said judgment and decision of the said supreme court, rendered and entered herein, there is manifest error, greatly to plaintiff's injury, in the following particulars, to wit:—

I.

The said supreme court of the State of Washington erred in holding that the effect of the provisions of section 5, of the act of Congress approved March 3d, 1887, 24th Stat. at Large, p. 557, were to withdraw the lands therein designated from right of homestead entry, and forever hold the same in reserve for the uncertain possible purchasers therein designated,—instead of holding as the lower court had held, that the provisions of said section 5, gave to the persons designated, the equal, and not preferred right to take and have the said lands, and that in this case, a refusal on the part of the land company to accept the opportunity and exercise the rights in said section conferred, for over ten years and until the plaintiff Ramsay had made the land valuable by the outlay of $1,200.00 in improvements thereon under her homestead entry duly made, and accepted by the Land Department, the said rights of the land company to take and have said land under the provisions of said section 5 had ceased to exist.

II.

The said supreme court erred in holding said land company to be a citizen of the United States within the meaning of said section 5.

III.

The said supreme court erred in holding as a fact, directly contrary to the holding and finding of the honorable Commissioner of

the General Land Office, that Kincade abandoned his pre-emption claim prior to the joint resolution of Congress of May 31st, 1870.

81 IV.

The said supreme court erred in assuming jurisdiction of this cause on appeal, in the absence of a statutory bond by one of the appellants, the land company, and in the absence of any notice of appeal served on said appellant by its co-appellant, and by such assumption of jurisdiction depriving this plaintiff of the equal protection of the laws, contrary to the fourteenth amendment of the Constitution of the United States.

V.

The said supreme court erred in reversing the judgment of the superior court given in this plaintiff's favor, and in dismissing plaintiff's cause of action, and in giving judgment against plaintiff for costs.

J. W. A. NICHOLS,
JOHN C. STALLCUP,
Attorneys for Plaintiff.

Due service by receipt of copy accepted this 20th day of August, 1903.

E. R. YORK,
Att'y for Defendants.

Endorsement: No. 4532½. Susan A. Ramsay, respondent, *vs.* Tacoma Land Company *et al.*, appellants. Assignment of errors. Filed Sep. 5, 1903. C. S. Reinhart, clerk. J. W. A. Nichols, John C. Stallcup, att'ys for plaintiff.

82 UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the honorable judges of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you, being the highest court of law or equity in the said State in which a decision could be had in said suit between Susan A. Ramsay, plaintiff in error, and The Tacoma Land Company; and Philadelphia Trust, Safe Deposit & Insurance Company and John C. Bullitt, trustees of the estate of Charles B. Wright, deceased, defendants in error, said judgment having been given and entered on the 4th day of May, 1903, on denial of petition for rehearing in said cause, wherein were claimed a right and privilege under the laws of the United States and the said judgment and decision were against the right and privilege so claimed and so especially set up under the laws and statutes of the United States, and manifest error hath happened to the great damage of the said

Susan A. Ramsay, as by her complaint appears, it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, within sixty days from the date of this writ, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11th day of August, in the year of our Lord one thousand nine hundred and three and of the Independence of the United States the one hundred and twenty-eighth.

[Seal United States Circuit Court, District of Washington.]

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

Due service by receipt of copy hereof admitted this 20th day of August 1903.

E. R. YORK,
Att'y for Defendants in Error.

[Endorsed:] 4532½. Susan A. Ramsay, pl'ff in error, *vs.* Tacoma Land Company *et al.*, defendants in errror. Writ of error. Filed Sep. 5, 1903. C. S. Reinhart, clerk.

83 UNITED STATES OF AMERICA, *ss:*

To the Tacoma Land Company, Philadelphia Trust, Safe Deposit & Insurance Company, and John C. Bullitt, trustees of the estate of Charles B. Wright, deceased, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October next, to-wit the 12th day of October, 1903, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein Susan A. Ramsay is plaintiff in error, and you are the defendants in error, to show cause if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Mark A. Fullerton, chief justice of the

State of Washington, this 5th day of September, in the year of our Lord, one thousand nine hundred and three.

MARK A. FULLERTON,
Chief Justice of the Supreme Court of the State of Washington.

Attest my hand and the seal of the said court, this 5th day of September, A. D. 1903.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk of the Supreme Court of the State of Washington.

Due service hereof with copy accepted this 8th day of September, 1903.

E. R. YORK,
Att'y for Defendants in Error.

83½ [Endorsed:] 4532½ Ramsay *vs.* Tacoma Land Co. *et al.* Citation.

84 In the Supreme Court of the State of Washington.

SUSAN A. RAMSEY, Respondent,
vs.
THE TACOMA LAND COMPANY ET AL., Appellants. } No. 4532½.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause. And I further certify that in pursuance of the writ of error heretofore filed in this cause I now transmit the said transcript together with the original writ of error and the original citation to the Supreme Court of the United States.

Seal of the Supreme Court, State of Washington.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Olympia this 30th day of September, 1903.

C. S. REINHART, *Clerk.*

Endorsed on cover: File No. 19,129. Washington supreme court. Term No. 138. Susan A. Ramsey, plaintiff in error, *vs.* The Tacoma Land Company and Philadelphia Trust, Safe Deposit & Insurance Co. and John C. Bullitt, trustees of the estate of Charles B. Wright, deceased. Filed November 9th, 1903. File No. 19,129.

FILE COPY.

FILE
SEP 6
JAMES H. McKENN

SUPREME COURT OF THE UNITED STATES.

SUSAN A. RAMSAY,

Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY and JOHN C. BULLITT, Trustee of the Estate of Charles B. Wright, deceased,

Defendants in Error.

No. 138.
(File No. 19,129.)

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF PLAINTIFF IN ERROR.

1. ON MOTION TO DISMISS.
2. ON THE MERITS.

JOHN F. SHAFROTH,
JOHN C. STALLCUP,
J. W. A. NICHOLS,
Counsel for Plaintiff in Error.
308 Equitable Building, Tacoma, Washington.

SUPREME COURT OF THE UNITED STATES.

SUSAN A. RAMSAY,

Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY and JOHN C. BULLITT, Trustee of the Estate of Charles B. Wright, deceased,

Defendants in Error.

No. 138.
(File No. 19,129.)

I.

ON THE MOTION TO DISMISS.

Plaintiff in error claimed the right to appropriate the land herein in controversy under the Federal Land Laws, to-wit, the homestead laws. The defendants in error claimed that the said homestead laws had been so modified, changed in effect, and superceded by the enactment of later statute, as to give to them the defendants, a "preference" or "superior right", to the same land as against plaintiff's homestead right The section, the effect of which is so disputed is Section 5, of the Act of Congress, approved March 3d, 1887. (24th Stat. at Large, page 557.) The State Supreme Court construed said section 5, as so modi-

fying and superceding the homestead laws as to give defendants the preference and superior rights by them claimed, and cancelling the homestead entry of plaintiff and decreeing title in defendants, after plaintiff's said entry duly made, and accepted by the Land Department, and after the full five year's residence upon said land and all provisions of the homestead laws fully complied with by plaintiff in error.

Defendant in error now argues that as the general effect of the homestead laws was not under construction, but only the effect of said section 5 of the act of 1887, and as plaintiff in error is not claiming under said section 5, but only under the homestead laws, therefore no jurisdiction attaches, even though by such construction the homestead laws are held to be so superceded as to cause us the loss of our homestead.

We are not aware that this identical question has been passed upon by this Court; but it has always been our impression that any construction of Federal statute which denied to a party to the suit the rights, privileges or immunities which he claimed under such statute (other jurisdictional features being present) would give him the right of review in this Court, regardless of whether the construction given were direct, as upon an immediate interpretation of its language; or indirect, as by passing upon the effect of some other statute upon the one claimed under, or otherwise. If the writ of review depends upon a direct construction of the terms of statute alone, regardless of the effect of other statutes claimed to control the same, then a State statute might nullify a Federal statute, and the rights therein guaranteed be lost with no right of review in

this Court. We can only say we think the proposition is not sound.

Defendant in error proceeds to argue on page 7 of its brief, that the State Court's decision was based upon an independent ground, not involving a Federal question, namely, that the State Court found "and in effect held," that the plaintiff in error had not acted in good faith.

We suggest in reply to this, that an examination of the record will show, 1st,—that the State Court's decision was not based upon such finding; and 2nd,—that no such finding was made; and 3d,—that the Court had no authority to make any such finding, as the facts in this case were all found by the Honorable Commissioner of the Land Department and the Honorable Secretary of the Interior, while on trial before them, and that their findings are conclusive, and that no question of plaintiff's good faith was ever raised until in defendant's brief on this motion to dismiss. But defendant shows on the next page of his brief (page 9, middle,) that no such question of fact arose or was passed upon, by reciting that the "sole question presented for decision and decided by the State Court was the construction of section 5, of the act of March 3d, 1887"!

Defendant in error criticises the fourth assignment of error as being based upon a construction of a State statute.

The error complained of is not in the construction of any statute but in the ignoring of the statute and the refusal of the State Court to accord to plaintiff in error her rights thereunder equally with other citizens of the State.

The statutes under which plaintiff in error claims rights that have been denied her, while accorded to all other citizens of the State in all other cases where the same

claims have been made, are sections 1052, and 1054, of Pierce's code, and the portions thereof pertinent here, read as follows:

(From sec. 1052). "When the notice of appeal is not given at the time when the judgment or order appealed from is rendered or made, it shall be served in the manner required by law for the service of papers in civil actions and proceedings, upon all parties who have appeared in the action or proceeding."

(And from section 1054.) "The appeal bond must be executed in behalf of the appellant by one or more sureties."

The appeal bond in this case was not executed on behalf of the appellant Land Company, by any surety.

The only persons named as obligors in the bond, are the trustees of the Wright estate.

And the surety in the said bond, expressly limits its liability to the default of the said trustees; the Land Company is without a surety.

See the bond, Transcript page 49.

There was only one notice of appeal given, and that was not at the time of judgment, and was never served on the Land Company.

See the notice, Transcript page 48.

Under such condition of the record, plaintiff in error, being the respondent in the State Court, moved the Court for a dismissal of the appeals, of the Land Company for want of a statutory bond, and of the Wright estate for want of a notice of appeal served on the Land Company; and cited the statutes, and the numerous and uniform rulings of the Court in like cases.

Hopkins vs. Satsop Ry. Co., 18th Wash. 679.

Starling vs. Burdette, 28th Wash. 261.
Dodge vs. Corliss, 27th Wash. 685.
Spokane & I. L. Co. vs. Loy, 21st Wash. 501.

In this last case the Court says on page 504: "It will be observed that the law does not repuire a bond on appeal to be executed by the appellant, but only in his behalf". And in a later case, decided since this case, (Aetna Ins. Co. vs. Thompson, 76 Pac. Rep., page 105) they reiterate the law of notice to be served.

This plaintiff never excepted to that construction. What she did except to and still excepts to is the refusal of the State Court to extend to plaintiff the protection of that law and that construction. She pointed out to the Court that the bond contained no surety for the Land Company, and asked that its appeal be dismissed. She pointed out that no notice of appeal had been served by the trustees of the Wright estate on their co-appellant, and asked that their appeal be also dismissed. She cited the statute and the Court's unbroken rulings thereon; and the Court persistently ignored her question raised and the basis of her motion, and instead of ruling thereon, assumed to rule upon another and uncontroverted proposition not raised in the case, namely, that an attorney has power to sign his client's name, and, so assuming to rule, denied the motion.

See Opinion, Transcript, page 57.

We submit that such refusal by the State Court to give this plaintiff the benefit and the protection of the statute and of the Court's own unbroken construction thereof, without even attempting to modify such construction, but

by evading the question raised, is a plain denial to this plaintiff of the equal protection of the laws; a denial, too, from which we can get no redress unless this Court will give us relief. If the State Court can thus at pleasure suspend the operation of the laws in individual cases, then the law is no protection, and the courts become mere respecters of persons.

We believe the Fourteenth Amendment to the Federal Constitution prohibits such denial of equal rights; and that the remedy for such wrong lies in the revisory powers of this Court; and that such remedy and its application have been recognized by this Court in the case of

Virginia vs. Rives, 100 U. S. 313,

where the Court says: "A state may exert her authority through different agencies, and those prohibitions" (of the Fourteenth Amendment) "extend to her action denying equal protection of the laws, whether it be by one of these agencies or by another; * * * by either the Legislative, the Executive or the Judicial departments of the state. * * * Denials of equal rights in the judicial tribunals of the state are left to the revisory powers of this Court."

We submit, therefore, that for each and every of the foregoing reasons the writ of error lies, and the motion to dismiss should be denied.

II.

ON THE MERITS.

STATEMENT OF THE CASE.

The plaintiff in error here was plaintiff below; and this is a controversy over the title to forty acres of Government land.

The questions involved require the construction of section 5 of the Act of Congress, approved March 3rd, 1887 (24 Stat. at Large, 557), as affecting the operation of the United States homestead laws; and the Fourteenth Amendment to the Constitution of the United States.

As to Section 5, the questions are these:

1st.—Is the said section in effect an act to quiet title?

2nd.—Does the said section in effect withdraw from the operation of the settlement laws of the United States any portions of the public lands, "and hold them, as it were, in mortmain"?

3rd.—Does the said section give a preference or superior right to the class of persons therein named over the settler under the homestead laws?

4th.—Does said section confer upon any person such a preference or superior right that, after his neglect to accept or apply for the benefits of said section until long after another with the approval of the Land Department has duly appropriated the land under the homestead laws and expended many hundred dollars and months of time in the improvement thereof, the first may then exercise his supposed preference or superior rights and oust the first from his homestead and his improvements?

5th.—Is a corporation a citizen within the meaning of said section 5?

And as to the Fourteenth Amendment, the question arising is this:

May the Supreme Court of the State of Washington deny to this plaintiff in error the protection of the law which it gives to all other litigants in said Court in like cases?

The foregoing questions of law arise in this case in the following manner:

The record herein shows that in February, 1897, plaintiff in error filed in the United States Land office at Olympia her application to enter as a homestead the land here in dispute, to-wit: the southwest quarter of the northwest quarter of section three (3), of township twenty (20), north of range two (2) east of the Willamette Meridian, in Pierce county, Washington. Her application was accepted by the Land Department, the entry duly made, fees paid, receipts given and all the law fully observed. In pursuance of her said entry, the plaintiff, in May following, went upon said land and built her house, barn and other outhouses, and improvements, of the value and cost of twelve hundred dollars, and then and there took up her abode and has ever since lived there as her home, and fully performed all the requirements of the homestead laws.

In August, 1897, and after all said improvements done and said home established, the defendant Tacoma Land Company made application to the Land Department to purchase said land from the Government, claiming the right so to do by virtue of section 5 of the Act of Congress approved March 3d, 1887 (24th Stat. at Large, p. 557), as the bona fide purchaser of said land from the Northern Pacific Railroad Company, in the year 1874, as part of said Company's grant from the Government, but being in fact excepted from said grant by the prior pre-emption filing thereon of one C. W. Kincade.

Pursuant to the Land Company's published notice, plaintiff appeared before the Department and resisted the Company's application, and urged, as reasons therefor,

her own accepted and perfected homestead entry, her established improvemnets and home and residence on said land, and that said Company was not a citizen within the meaning of the section under which it claimed.

The Land Office held that the Land Company had a preference or superior right to purchase the land over the completed and appropriated rights of the plaintiff under the homestead laws, and granted the Company's application and ordered the homestead entry of plaintiff cancelled. The regularity of the plaintiff's homestead application, entry, and all her proceedings thereunder was never at any time questioned. On appeal, the Honorable Commissioner of the General Land Office held that the Local Office had erred in allowing the Land Company's application while the plaintiff's homestead entry remained (transcript, page 17, line 13), but nevertheless affirmed the decision of the local office; and, on further appeal, the Honorable Secretary of the Interior made practically the same ruling.

The facts material to this controversy, and as found by the Honorable Secretary and Commissioner, are set out in their opinions (transcript, pp. 16 to 25), and by the Honorable Judge of the Superior Court trying the cause in his findings (transcript, pp. 41 to 45), and are, in brief, as follows:

That this land was within the limits of the grant to the Northern Pacific Railroad Company by joint resolution of Congress of May 31st, 1870, but was excepted from the operation of that grant by the prior pre-emption filing thereon of one C. W. Kincade.

Transcript, pp. 16, 21, 42.

That in 1874 the Railroad Company, assuming this land to be within the grant, attempted to sell and convey the same, included in a transfer of about twelve thousand acres, to the defendant in error, the Tacoma Land Company.

Transcript, pp. 17, 21, 42.

That on July 13th, 1896, in a contest over this same forty acres between one C. W. Corliss and the said Railroad Company, the Land Department held finally that the said forty acres was excepted from the said railroad grant by the said Kincade filing.

Transcript, pp. 18, 21, 43.

That in February following (1897) this plaintiff in error had applied to enter the land as her homestead, her application was duly accepted, the entry made, the land appropriated thereunder improved to the amount of twelve hundred dollars, her home there established, and ever since so held by her and so occupied, and all provisions of the homestead law fully complied with.

Transcript, pp. 17, 21, 41.

That not until August, 1897, did the Land Company attempt to avail itself of any rights it might have had under the said section 5 of the act of 1887, being more than ten years after the passage of the said act—more than one year after the Department's decision in the Corliss case touching this same land—and more than six months after plaintiff's homestead entry, and after all her improvements made and home established as aforesaid.

Transcript, pp. 17, 21, 43.

As before stated, the Land Department, upon Miss Ramsay's application, found this land to be of the proper class, of the public domain, and subject to homestead entry, and Miss Ramsay duly qualified to enter the same. And these findings have never been modified. But the Department held, notwithstanding said facts, that the Land Company had a preferred and superior right, under said section 5, over the plaintiff's appropriated and established homestead rights; and ordered the homestead entry cancelled and caused a patent to issue to the Land Company conveying the title to said land.

Upon such ruling and the issuance of the patent, plaintiff brought her suit in the Superior Court of the State of Washington for Pierce county, setting up a full and detailed statement of the facts, including the findings of the Honorable Secretary and Commissioner (transcript, pp. 1 to 15), and prayed judgment that the said patent and title thereunder be declared held in trust by the Land Company for plaintiff's benefit, and that a transfer of the legal title be decreed to her.

The Honorable Judge of the Superior Court found the facts as set forth in the opinions of the Honorable Secretary and Commissioner, and, further, that since the hearing in the Department the plaintiff had completed her five years' residence and fully performed all other requirements of the homestead laws, besides having duly tendered payment therefor as by law permitted after fourteen months' residence thereon, and granted the relief prayed.

Transcript, pp. 41 to 47.

On the appeal, the Supreme Court of the State of Washington reversed the judgment and decree of the Su-

perior Court, held that the aforesaid section 5 of the Act of 1887 gave to the Land Company preferred and superior rights over plaintiff's completed homestead rights, and dismissed her suit.

Transcript, pp. 57 to 60.

II.

SPECIFICATIONS OF ERRORS.

The errors committed by the Supreme Court and urged here are these:

1st: The Court erred in construing section 5 of the said Act of March 3rd, 1887 (24 Stat. at Large, p. 557) to be in effect an act to confirm title.

2nd: The Court erred in holding that section 5 authorized the withdrawal or operated to withdraw the lands described from entry under the homestead laws, namely: the Act of Congress of May 20th, 1822, as set forth in sections 2289 to 2317 inclusive of the Revised Statutes of the United States and acts amendatory thereto.

Transcript, p. 57.

3rd: The Court erred in holding that said section gave to the Land Company a preference right to purchase said land over plaintiff's rights thereto under said homestead laws.

Transcript, p. 59.

4th: The Court erred in holding that said section 5 gave to the Land Company such a preference and superior right over plaintiff's rights under said homestead laws that it, the said Land Company, could lay by and wait,

without attempting to claim or exercise its supposed rights under said section 5, until the plaintiff had completed her rights under said homestead laws and made the said land valuable by her improvements, and then step in and take all.

Transcript, pp. 59-60.

5th: The Court erred in holding that a corporation is a citizen within the meaning of said section 5.

Transcript, p. 59.

6th: The Court erred in denying to this plaintiff the equal protection of the laws by entertaining the appeal of these defendants in error, from the Superior Court of Pierce county, in the absence of the statutory bond and notice of appeal, held essential to jurisdiction on appeal in all other like cases.

Transcript, pp. 48, 49 and 57.

ARGUMENT.

Miss Ramsay's homestead entry and all her proceedings thereunder were in all respects regular and complete. No defect or omission therein is anywhere suggested in any of the findings or judgments had in the many stages of the cause. The sole reliance of defendants in error is on the said section 5 of the Act of 1887. That section in full is as follows:

"That where any said company shall have sold to citizens of the United States, or to persons who have declared their intentions to become such citizens, as part of its grant, lands not conveyed to or for the use of such com-

pany, said lands being the numbered sections prescribed in the grant and being co-terminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to said bona fide purchaser, his heirs or assigns: provided, that all lands shall be excepted from the provisions of this section which at the date of such sales, were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: provided, further, that this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases."

That this section is not a curative act in terms, appears upon inspection.

That it is not a curative act by implication appears upon consideration, because:

1st: The section assumes as its basis that the grant has failed as to certain lands, and is made to apply to such lands only as "are for any reason excepted from the operation of the grant."

If the lands were excepted from the grant there was then no title to cure; and if they were not excepted lands they were not within the class to be acquired under this section.

2nd: The section requires purchase and payment to the United States "at the ordinary government price for like lands."

It cannot be imputed to Congress that that body intended to "cure" the title of the deceived or mistaken purchaser from the railroad company, by requiring him again to purchase from the United States at the "ordinary government price." Such a cure is not consonant with the idea of protection to an innocent purchaser. It is much more reasonable to assume that Congress intended to provide a way available at option whereby such purchasers from the railroad company might be permitted to acquire title to the land, and thus save any improvements that might have been made for themselves and which they could not do without aid from Congress, and leaving them to their remedy against the railroad company for the failure of title, especially so as Congress had provided against loss to the railroad company from this cause by the enactment of the lieu-land laws.

And so the Superior Court construed the Act—to be permissive only in its effect, and not operative except at the election of the purchaser; and until such election to remain as other public land.

The defendants in error want to give the section the opposite effect—the effect of holding the land in mortmain; the effect of enabling them to wait, with the title in the Government, until plaintiff's appropriation and culti-

vation and buildings had made a valuable property which they might reach forth and gather in.

As early as the year 1885 this Court held that preemption and homestead entries excepted such lands from subsequent grants.

Ry. Co. vs. Dunmeyer, 113 U. S. 629.

At that time there was no relief available to purchasers of such lands from the railroad companies. In 1887 the Act was passed providing a way for relief of those who chose to avail themselves of its provisions; it was not compulsory; it required full payment to the government; it was this same section 5 under which defendants now seek to rob this plaintiff of her industry.

At the time of the passage of the act, if ever, the Land Company ought to have instituted its proceedings to purchase under said act. But it did not; it waited more than ten years; waited until after Corliss had waged his contest with the railroad company and it was declared that this land was excepted from the grant (in July); waited still until more than another year had passed and the land had been redeemed from a wilderness to a cultivated home. Then the Land Company's time for action had arrived, and for seven years the unequal contest has been waged between the Land Company and this homesteader.

But defendant's curative theory is inconsistent with its other argument—the preference or superior right theory. The very use of the terms "preference" and "superior" implies that the other, the homestead right remained; or, in other words, those terms imply that the said section five did not cut off the homestead rights as to such

lands. How long is this imaginary preference to continue? The statute makes no more mention of what time a preference shall continue than it does of any preference at all; the whole preference theory has to be supplied—read into the statute by the courts, if read at all. If Congress had intended that a preference should be given by the said section 5, or that any homestead or other rights to such lands, actual or potential, should be suspended, superceded or cut off altogether, it is a reflection on the intelligence of that body to presume that it would have left so important matter to mere conjecture. If, on the other hand, Congress did not have in mind such intent, we know of no authority for the Courts, in the absence of any expression in the statute, to assume such intent. That this land being excepted from the railroad grant by the pre-emption filing was and remained public land, and subject to the pre-emption and homestead laws at all times, is fully determined by this Court in the case of

Bardon vs. Northern Pacific R. Co., 12th [illegible]. Ct. Rep. 856.

But, aside from the mischief wrought by such judicial extension of the statute, the plain, ordinary rules of statutory construction forbid such interpretation. A statute will not be construed to repeal or modify a prior law except by direct expression or necessary implication.

The direct expression of repeal or modification being absent, the duty devolves on defendant to point out the "necessary implication" for the construction it asks. No attempt is made by defendants to point out such necessity, beyond their own wish. And, indeed, on inspection it will

appear that no such necessity exists. The language used in both the said section 5 and the homestead laws can be given its full, ordinary meaning and interpretation in both laws without repeal or modification of either. That such construction will be given always, in the absence of imperative necessity for a different construction by the language of the later statute, is a rule too familiar to require citations of authority. The necessity which will warrant a repeal or modification of one statute by another must arise from repugnancy or inconsistency in the language of the two; and repugnancy in principle merely is not sufficient. The rule is, that so long as both statutes can stand by any fair interpretation, that construction will be given which will give effect to both.

Sutherland on Statutory Construction, secs. 137-8.

But in the case in hand there is no repugnancy and no inconsistency in the two laws. The later law merely extends to certain persons the right to acquire by purchase certain public lands from the Government, without any attempt to suspend the rights of other persons under other laws; and so the trial Court found and set forth the law in his fourth and fifth conclusions of law.

Transcript, p. 43.

We respectfully submit that the Supreme Court of Washington had no authority to deny to this plaintiff her rights under the homestead laws by construing the same to be suspended or modified by the law of 1887, and that its decision and judgment of dismissal ought to be reversed.

CITIZENSHIP.

We think a corporation is not a citizen within the meaning of the said section 5.

The term citizen is construed to include corporations in certain mining laws, and practice acts; but in every case such construction is given because the context requires that interpretation; that is, because the language used in the act, taken together, requires such meaning to be given. But in this section 5 of the law of 1887 there is not one word, nor indeed in the whole act, that requires the construction that a corporation should be granted the right to acquire public land. Indeed, if the whole body of law for acquiring public lands be considered, there is repugnancy and inconsistency in the idea that corporations be included in the term "citizen." First, Congress never in terms gave to corporations the right to acquire public lands except for mining purposes and by special grants, but, on the contrary, has made special effort to preserve the public domain for individual settlers. Second, even where mining rights and special grants have been extended to corporations, it has always been on the ground of a public necessity. And, third, this same Congress which passed the Act of March 3rd, 1887, containing this section 5, passed another act, approved the same day, limiting the amount of land which corporations might acquire by any means to five thousand acres in any territory of the United States (as Washington then was), and providing further that all property "acquired, held or owned" in violation of the provisions of this act should be forfeited to the United States, and that if necessary the Attorney General should take steps to declare the forfeit.

Shee Chap. 340, 24th Stat. at Large, pp. 476-7.

The land which this Land Company had attempted to "acquire" from the railroad company by the purchase of which this forty acres was a part was far in excess of that limit, being about twelve thousand acres, as admitted by the pleadings herein (complaint, par. XIX, p. 13, and answer, par. XIII, p. 30 of transcript, which by code provision admits as true all allegations not denied).

Pierce's Code, Sec. 413.
Bal. Code, Sec. 4943.

And so this case presents the Land Company, a corporation, not claiming under any mining law; not claiming by any grant to itself; not claiming under any expressed statutory language—but claiming under an inference repugnant to purport and general intent of all the United States land laws, and even in direct contravention of the Chapter 340 above cited. We submit that the ruling that the company is a citizen within the meaning of the said section 5 is error and should be reversed.

The argument on the denial of the equal protection of the laws by the Supreme Court of the State, in refusing to consider the rule upon the grounds of our motion to dismiss the appeal of the respondents in the State Court, having been fully presented in our argument on the motion of defendants in error to dismiss, we do not think it necessary or proper to repeat it here, and can only say, in closing, that this case presents to our minds this picture—of a woman seeking to acquire a home under the laws which Congress has enacted as a special inducement to the citi-

zens of the United States, the plaintiff and those like her having accepted the proffered invitation and fully complied with all its requirements in spirit and in letter, she then asks the recompense held forth in the invitation—the title to the land she has reclaimed.

Opposed to her is this corporation—not claiming under any invitation from the Government, but by an inference only, and that, too, repugnant to the spirit of all the land laws; claiming only under an attempted but void purchase from the railroad company in 1874, but without having made a dollar's worth of improvements on the land during the twenty-three years between its assumed purchase and the homestead entry of plaintiff; making no attempt to take the title out of the Government or to acquire the land in any lawful way until after plaintiff's acceptance of and compliance with the invitation of the homestead laws—we cannot think the judgment of the State Court, wresting this woman's property from her and passing it over to the Land Company, can be sustained. It is not equity, and we do not believe it is the law; and we respectfully ask that the said judgment be reversed and that plaintiff's homestead rights be protected and established.

JOHN F. SHAFROTH,
JOHN C. STALLCUP,
J. W. A. NICHOLS,
Attorneys for Plaintiff in Error.

FILE COPY.

Office Supreme Court U.
FILED
AUG 17 1904
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 138.

SUSAN A. RAMSAY, Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY, and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, Deceased, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR, ON MOTION TO DISMISS.

STANTON WARBURTON,
E. R. YORK,
Counsel for Defendants in Error,
Tacoma, Washington.

J. EDMUND CATES, PRINTER, TACOMA, WASH.

IN THE

SUPREME COURT

OF THE UNITED STATES

SUSAN A. RAMSAY, *Plaintiff in Error,* vs. THE TACOMA LAND COMPANY, a Corporation; PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY, a Corporation, and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, Deceased, *Defendants in Error.*	October Term, 1904 No. 138

BRIEF OF DEFENDANTS IN ERROR ON MOTION TO DISMISS.

The motion to dismiss the writ of error in this cause is based upon the ground of want of jurisdiction

of this Court to review the decision of the State Court upon the questions presented.

The writ alleges error in the decision and judgment of the Supreme Court of the State of Washington upon a right and privilege claimed under the laws of the United States, and that said decision and judgment were against the right and privilege so claimed.

The assignments of error are in substance:

1st. That the Supreme Court of the State of Washington erred in its construction of section 5 of the Act of Congress approved March 3, 1887, 24 Statutes at Large, page 557, that the land involved herein was subject to the preferred right of purchase by the defendant in error, Tacoma Land Company, under section 5 of said act.

2nd. That said Supreme Court erred in its construction of said section 5 of said act, in holding the Tacoma Land Company to be a citizen of the United States within the meaning of said section.

3rd. That said Supreme Court erred in its finding and decision upon a question of fact.

4th. That said Supreme Court erred in its construction of a statute of the State of Washington.

5th. That said Supreme Court erred generally in its decision and judgment, no particular ground of error being specified.

I.

This Court has no jurisdiction to review the decision and judgment of the State court in this cause, unless it be upon a question wherein a title, right or privilege was claimed under the constitution or laws of the United States, and the decision was against such title, right or privilege specially set up or claimed; and defendants in error submit that such a question and decision does not appear in the record in this cause.

The Supreme Court of the State, in its decision, from which this writ of error is taken, stated the precise question at issue and decided by that court, as follows:

"The only question in the case is whether or not the Land Department of the United States has properly construed section 5 of the Act of Congress approved March 3, 1887—24 U. S. Stat. at Large, p. 557—as giving to the Tacoma Land Company a preference right to purchase the land in question over the respondent, who, with knowledge of the rights of appellants, had filed on the land prior to the application of the Land Company to purchase." * * * "We are satisfied that the appellants had a preference right to purchase within a reasonable time, and that the Land Department correctly construed the law in so holding." (Record p. 58, 59.)

The State court by its decision sustained the right and title to the land claimed by the Tacoma Land

Company, defendant in error herein, under the exercise by said Company of its preferred right to purchase said land under the provisions of section 5 of said act of Congress.

The Tacoma Land Company, and its grantees, defendants in error herein, now hold title to said land under patent of the United States issued to said Company upon the due exercise of its preferred right of purchase under the provisions of section 5 of said act of Congress, and the plaintiff in error sought to have the defendants in error decreed to be trustees of the title for her and to make conveyance to her of the land; and the sole question involved and presented for the decision of the State court was whether said Land Company had such right of purchase under section 5 of said act, and the validity of its title under the patent of the United States. The only provision of the constitution or of any law of the United States which was involved, considered, or construed by the State court was section 5 of said act of March 3, 1887, and the right and title of the Tacoma Land Company based thereon; and the decision of the State court was *in support* of that right and title. This is amply shown by the writ of error, the first assignment of error, and the record in this cause. (Record, p. 64, 65.)

The decision was, therefore, in that respect, one where was drawn in question a right, title or privilege

claimed and exercised by said Land Company under a statute of the United States, and the decision was—*not against*—but *in support* of that right, title and privilege set up and claimed by said Land Company.

Where the decision of the State court was *in favor* of the title, right or privilege claimed under the federal authority, the Supreme Court has no jurisdiction to review it.

State, ex rel. Carey vs. Andriano, 138 U. S., 496.

The writ of error can be sustained only when the decision of the State court was *against* the right claimed under the constitution and laws of the United States.

Dower vs. Richards, 151 U. S., 658.

The decision of the State court did not in terms, or in effect, attempt to construe any provision of the constitution or laws of the United States relating to the right of homestead entry on public lands; it does not contain any reference to or application of any particular section or provision of the constitution or any statute of the United States relating to homestead entries, which was drawn in question or passed upon in any manner by the State court; but the record in this case and the decision of the State court primarily and solely involved the construction and application of section 5 of the act of March 3, 1887,

granting the right of purchase exercised by the Tacoma Land Company, upon which its title was acquired, and that decision was in support of and confirmed that right. (Record, p. 57-60.)

Hoyt vs. Thompson, 66 U. S., 518.
Sayward vs. Denny, 158 U. S., 180.

In the case of Israel vs. Arthur, 152 U. S., 355, this Court held that:

"It is not sufficient for the maintenance of our jurisdiction to review the judgments of State courts that a right, title, privilege or immunity under the constitution of the United States may have been claimed, but such right, title, privilege or immunity must have been denied."

Neither the writ of error, nor the assignment of errors, specify any right, title, or privilege claimed by the plaintiff in error under the act of March 3, 1887, which was decided against her by the State court. There is, therefore, no federal question presented for decision which brings this case within the jurisdiction of this Court.

It has been frequently held by this Court that in order to give this Court jurisdiction of a case on writ of error to a State court, it must appear affirmatively, not only that a federal question was presented for decision by the State court, but also that the decision

of that question was necessary to the determination of the case, and that it was actually decided adversely to the party claiming a right under the federal laws, or that the judgment as rendered could not have been given without deciding it.

Fowler vs. Lamson, 164 U. S., 261.

But even if it be considered that a federal question is presented, or was decided below, yet it is held that where the State court in rendering its judgment decides a federal question, and also decides against the plaintiff in error upon an independent ground, not involving a federal question, and broad enough to support the judgment, the writ of error will be dismissed without considering the federal question.

Bacon vs. State of Texas, 163 U. S., 207.

And when the decision of the court below was adverse to the plaintiff in error upon two or more independent grounds, one of which was not a federal question, this Court will dismiss the writ of error without considering the federal question.

Eustis vs. Bolles, 150 U. S., 361.
Rutland R. R. Co. vs. Cent. Vt. R. R. Co., 159 U. S., 630.

Murdock vs. Memphis, 20 Wall., 590.
Adams Co. vs. Burlington, &c., R. R. Co., 112 U. S., 123.
DeSaussure vs. Gaillard, 127 U. S., 216.
Marrow vs. Brinkley, 129 U. S., 178.

The writ of error brings before the Supreme Court for decision only the federal question in the case.

Ashley vs. Ryan, 153 U. S., 436.

The record also shows that the State court found, and in effect held as grounds for its decision, that plaintiff in error had not acted in good faith; that she had attempted to assert and claim a right to the land with notice and knowlege of the prior rights and claims thereto of the defendants in error; and that she was thereby estopped to deny their prior and superior right to the land, or to assert any right or claim in conflict with or adverse to the title of the defendants in error, who are purchasers of the land for value and in good faith.

The State court in its decision not only decided that the Tacoma Land Company had a preferred right to purchase the land within a reasonable time, but also found and held, as one of the grounds of its decision, that the application and purchase of the land made by said Company was made within such reason-

able time. This was a finding and decision upon a question of fact, which is conclusive and binding upon this Court, under the authorities hereinafter cited.

The case did not present for decision by the State court, and that court did not decide, any question as to whether the plaintiff in error was qualified to make a homestead entry, or whether the land involved was subject to homestead entry, or whether she had complied with the homestead laws, or make any construction or application of the homestead laws to her rights or claims to the land. But the sole question presented for decision, and decided by the State court, was the construction of section 5 of the act of March 3, 1887, giving the Tacoma Land Company a preferred right to purchase the land within a reasonable time, and whether it did apply for and purchase the land under that right within such reasonable time. The decision of that question was decisive of the whole case, and rendered unnecessary any consideration or decision as to the rights or claims of the plaintiff in error under the homestead laws, or any construction of the homestead laws. The question decided was determined *in support* of the right of purchase by the Tacoma Land Company under which the defendants in error claim title. Therefore, there was not presented for decision, or decided, by the State court any question involving any right, title or privilege *claimed*

by the plaintiff in error under any law of the United States, nor was the decision of the State court *against* any right, title or privilege so claimed, within the provisions of Sec. 709 of the Revised Statutes of the United States.

II.

The error alleged in the second assignment is subject to the same objection as above discussed, and it is insufficient in form and substance to present for decision any question within the jurisdiction of this Court.

The plaintiff in error claimed no right, title or privilege by reason of the Tacoma Land Company being a citizen within the meaning of section 5 of the act of March 3, 1887, and the decision of the State court was not against any right claimed by plaintiff in error under such citizenship; but, on the contrary, that decision construing section 5 of said act held that said company was a citizen within the meaning of the act, and sustained its right, as such citizen, to purchase the land under the provisions of the act.

That question, however, was no longer a new or open one; it had been theretofore decided and settled by the decisions of this Court.

U. S. vs. N. W. Express, Stage & Transp. Co., 164 U. S., 686.

Minn. & St. Louis Ry. Co. vs. Beckwith, 129 U. S., 28.
Charlotte R. R. Co. vs. Gibbes, 142 U. S., 391.
Shaw vs. Quincy Mining Co., 145 U. S., 444.
Smyth vs. Ames, 159 U. S., 466.
Pembina Mining Co. vs. Penn'a, 125 U. S., 181.
Santa Clara Co. vs. So. Pac. R. R. Co., 118 U. S., 396.

It had long been the settled and uniform decision of the Land Department of the United States.

Miller vs. Tacoma Land Co., 29 Land Dec., 633.
Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

and it is manifest that the assignment of error on this ground was for purposes of delay only.

III.

The third error assigned was in the finding and decision of the State court upon a question of fact.

It is so clearly settled by the repeated decisions of this Court as to require no argument, that it is not within the jurisdiction of this Court to review the decision of a State court upon a question of fact. The writ of error brings up matters of law only.

Dower vs. Richards, 151 U. S., 658.
Egan vs. Hart, 165 U. S., 188.
Israel vs. Arthur, 152 U. S., 355.

In any event, the matter of fact complained of, as stated in the decision of the State court, was more in the nature of a recital than of a finding or decision; and, further, it was not a matter of fact vital or material to the decision of the case.

IV.

The fourth error assigned is based upon the construction given by the State court to a statute of the State of Washington.

Upon the appeal from the trial court to the Supreme Court of the State, an objection was made by plaintiff in error to the form and sufficiency of the appeal bond filed, by a motion to dismiss the appeal on the ground that the appeal bond did not comply with the requirements of the State law. The motion to dismiss the appeal was fully argued before the State court, and was denied,—that court holding the bond sufficient and in compliance with the requirements of the law and practice of the State, and that the case had been properly brought into that court on appeal.

This Court, upon a writ of error from a State Supreme Court upon a federal question, will not in-

vestigate the correctness of the course of proceeding by which the case came into the State Supreme Court.

Boston Beer Co. vs. Massachusetts, 97 U. S., 25.

When a case is brought into the United States court, comity generally requires of that court that in matters relating to the proper construction of the constitution and laws of its own state the United States Court should follow the decision of the State court. This Court has frequently held, in harmony with that principle, that the construction of a State statute by the highest court of the State forms a rule of decision for the federal court; that this Court will conform its decisions to those of the State courts on their local laws; and as to questions involving State laws and practice, this Court will follow the rules adopted by the State court.

13 Century Digest, p. 2736.
Loeber vs. Schroeder, 149 U. S., 580.
Thorington vs. Montgomery, 147 U. S., 490.
Bacon vs. State of Texas, 163 U. S., 207.

"The construction by the courts of the State of its constitution and statutes is as a general rule binding on the federal courts. We may think that the Supreme Court of a State has misconstrued its constitution or its statutes, but we are not at liberty to

therefore set aside its judgments. That court is the final arbiter as to such questions."

Forsyth vs. City of Hammond, 166 U. S., 506.

"The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the courts of the United States as the text." * * * "The meaning of a State statute declared by the highest court of a State, is conclusive upon this Court."

Morley vs. Lake Shore & M. S. R. R. Co., 146 U. S., 162.
Sayward vs. Denny, 158 U. S., 180.
Miller vs. Anderson, 150 U. S., 132.

It was for the Supreme Court of the State of Washington to determine whether the requirements of the statute, as to the execution of the bond on appeal, had been complied with, and whether or not the appellant in that court had kept within the terms of the statute.

N. P R. R. Co. vs. Patterson, 154 U. S., 130.
People's National Bank vs. Marye, 191 U. S., 272.

The alleged error here assigned did not involve the *validity* of a state statute, but merely the *construc-*

tion of such statute. The jurisdiction of this Court extends only to questions involving the *validity* —not the *construction*—of a State statute, on the ground that it is contrary or repugnant to the constitution or laws of the United States. The question of the impairment of any constitutional right was not raised or presented in the State court, but is now presented here for the first time. This Court will not assume jurisdiction of a case, as one involving a federal question, where the federal question was not decided by the State court, but is first raised on writ of error in this Court.

The "equal protection of the laws" referred to in the fourth assignment of error, means the equal right to resort to the courts for the redress of wrongs and enforcement of rights, and exemption from unequal burdens and exactions of any kind.

The Railroad Tax Cases, 13 Fed. Rep., 722.
Co. of Santa Clara vs. So. Pac. R. R. Co., 18 Fed. Rep., 385.

Whenever a law operates alike upon all persons and property similarly situated, equal protection can not be said to be denied.

Walston vs. Nevin, 128 U. S., 578.

V.

The fifth assignment of error specifies no particular ground or character of error committed. It is too general, and is of no effect. Where the error assigned is not set out specifically, it will be held insufficient, and disregarded.

Denniston vs. Stewart, 18 Howard, 436.
Scholey vs. Rew, 23 Wallace, 331.

even though errors are apparent on the record,

Dietsch vs. Wiggins, 15 Wallace, 539,

and if none of the errors are properly assigned the writ of error should be dismissed.

Portland Co. vs. U. S., 15 Wallace, 1.
Rowe vs. Phelps, 152 U. S., 87.

The plaintiff in error has not assigned any error sufficient to bring this case within the jurisdiction of this Court; and this Court on review will not consider any errors except those assigned, and any errors not assigned are considered to have been waived.

Defendants in error respectfully submit that upon the record here presented, the writ of error should be dismissed.

STANTON WARBURTON,
E. R. YORK,
Counsel for Defendants in Error.

FILE COPY.

Office Supreme Court
FILED
NOV 22 19
JAMES H. McKENNEY

Supreme Court of the United States

OCTOBER TERM, 1904

No. 138.

SUSAN A. RAMSAY, PLAINTIFF IN ERROR,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, deceased, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR

STANTON WARBURTON,
E. R. YORK,
Attorneys for Defendants in Error,
421 Fidelity Building, Tacoma, Washington.

The Bell Press, Tacoma.

Supreme Court of the United States

OCTOBER TERM, 1904

No. 138.

SUSAN A. RAMSAY, PLAINTIFF IN ERROR,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, deceased, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR

MOTION TO DISMISS OR AFFIRM PENDING.

The defendants in error have filed a motion to dismiss or affirm, together with a brief in support thereof, which has been submitted to the court by the parties; but decision on the motion has been postponed by the court until the cause is reached for hearing on the merits. De-

fendants in error, without waiving, but still relying on, their motion, submit their brief on the merits.

STATEMENT.

This is a suit in equity, commenced by plaintiff in error, praying that she be decreed to be the owner of certain lands, which had been conveyed by patent of the United States to the Tacoma Land Company, and that said Company, and its grantees, defendants in error herein, be decreed to be trustees of the title thereto for plaintiff in error, and be required to convey the land to her.

The land in controversy is situate in Pierce County, Washington, and was located within the primary limits of the grant of lands made to the Northern Pacific Railroad Company by joint resolution of Congress of May 31, 1870 (16 Stat., 378), for that portion of its line of railroad between Portland and Puget Sound. (Record, pp. 17, 57.) The railroad company on August 13, 1870, filed its map of general route of its railroad, and on May 14, 1874, filed its map of definite location thereof in the office of the Secretary of the Interior (Record, pp. 17, 57); and pursuant thereto the Land Department withdrew and reserved from sale and entry the odd numbered sections of land within the limits of said land grant, including the land involved herein, for the benefit of said land grant (Record, p. 18); and thereafter said land was held by the railroad company and considered by the Land Department to have passed to the railroad company under said grant until the cancellation of the railroad company's selection and listing of the land by the Commissioner of the General Land Office on October 13, 1896, based on the decision of the Land Depart-

ment in case of *Corliss vs. Northern Pacific R. R. Co.* Until that date, October 13, 1896, the withdrawal and reservation of the land continued in force unrevoked. (Record, pp. 18, 57.)

In December, 1874, the Northern Pacific Railroad Company, for value, in good faith, and believing that it had title to said land, sold and conveyed the land by deed to the Tacoma Land Company, which was a corporation duly organized and existing under the laws of the State of Pennsylvania; the Land Company purchased the land for value and in good faith; and said deed was on March 10, 1875, filed for record and recorded in the office of the Auditor of Pierce County, Washington (Record, pp. 18, 23). Thereafter the Land Company, for value and in good faith, sold and transferred the land by mesne conveyances to the other defendants in error herein, who also purchased in good faith and for value; and said Land Company, and its grantees thereunder, took possession of the land, claimed title thereto, and exercised ownership thereof.

On March 3, 1887, Congress passed an act (24 Stat., 556) for the relief of *bona fide* purchasers of land from land grant companies whose title should fail by reason of the land so purchased by them being thereafter determined and held to be excepted from such land grant, and giving to such purchasers the right to enter and purchase such land at the ordinary price, and receive patent therefor.

Thereafter, in 1896, in a contest pending before the Land Department between other parties, it was determined and held by the ruling and decision of the Land Department that this land did not pass to the railroad company under its land grant, but was excepted therefrom, by rea-

son of the existence of an uncancelled of record pre-emption entry on the land at the date of the grant (Record, p. 21); and on October 13, 1896, the selection and listing of the land by the railroad company as a part of its grant was cancelled by the Land Department. (Record, p. 16.)

The title of the railroad company, and of its grantee, Tacoma Land Company, having thereby failed, the right of the Tacoma Land Company to purchase the land as a *bona fide* purchaser thereof from the railroad company, attached to the land under the provisions of Section 5 of the act of March 3, 1887 (Record, p. 58); and in exercise of that right the Tacoma Land Company, on August 27, 1897, filed in the local land office its application to purchase the land under Section 5 of that act. (Record, pp. 4, 20.)

The plaintiff in error, on February 24, 1897, filed in the local land office her application to enter the land as a homestead, but she did not go on the land until May 31, 1897, when she began certain improvements, and has since resided thereon. (Record, p. 18.) A contest ensued before the Land Department involving the right of the Tacoma Land Company to purchase the land under Sec. 5 of the act of March 3, 1887, wherein the Commissioner on September 26, 1899, rendered his decision, affirming the decision of the local land office, awarding the land to the Land Company, and ordering cancelled the homestead entry of plaintiff in error for conflict with the superior right of the Land Company to the land. (Record, pp. 16-20). Plaintiff in error appealed from that decision to the Secretary of the Interior, who on July 10, 1900, affirmed the decision of the Commissioner (Record, pp. 21-25); and pursuant thereto on October 4, 1900, the homestead entry was cancelled, the

cash entry of the land by the Land Company was approved for patent (Record, p. 26), and on February 20, 1901, a patent was issued by the United States to the Land Company for the land.

The trial court overruled a demurrer to the amended complaint in this cause (Record, pp. 27-28), and issues were formed by answer and reply filed (Record, p. 28-35). Upon the trial, the cause was submitted to the court substantially upon the facts found by the Land Department as set forth in its decisions attached to the amended complaint (Record, pp. 16-26), and the trial court rendered its judgment and decree in favor of plaintiff in error (Record, p. 46), from which judgment and decree the defendants in error appealed to the State Supreme Court, where, upon hearing, the judgment and decree of the trial court were reversed, and the cause dismissed (Record, p. 57-60), to review which decision this writ of error was taken to this court.

ARGUMENT.

The plaintiff in error seeks in this suit to review the decisions of the Land Department, upon the ground that the Commissioner of the General Land Office and Secretary of the Interior erred in their decisions awarding the land to the Tacoma Land Company, based upon the facts found by them and set forth in their decisions. (Record, pp. 16-26.) The rights and claims asserted by the Land Company in this suit were fully heard and tried, the facts found and determined, and an adjudication made in its favor, by the decisions of the Land Department. Those findings and decisions as to all matters of fact, in the absence of fraud or imposition, which are not alleged in this

suit, are final and conclusive, and cannot be reviewed by the courts.

Carr vs. Fife, 156 U. S., 501.

Bardon vs. N. P. R. R. Co., 154 U. S., 327.

Steel vs. Refining Co., 106 U. S., 447, 451.

Lawrence vs. Potter, 22 Wash., 32, 36.

Vance vs. Burbank, 101 U. S., 519.

Whether a transaction was entered into in good faith, or with fraudulent intent, presents questions of fact, and in so far as those questions are involved, the conclusions of the Land Department are final.

Gertgens vs. O'Connor, 191 U. S., 241.

SUPERIOR RIGHT OF PURCHASE.

The Tacoma Land Company had a superior right to purchase the land under Sec. 5 of the act of 1887, quoted on page 58 of the record.

Defendants in error contend that this right to purchase from the United States, under Sec. 5 of said act, land purchased by the Land Company in good faith from the Railroad Company, whose title had failed, was superior to the common right of any person to enter the land under the general land laws; that the deed conveying the land to the Land Company then of record charged the plaintiff in error with notice of the Land Company's rights under the act of 1887; and any application of plaintiff in error

to enter the land was subject and inferior to this superior right of the Land Company.

We further contend that, under the provisions of Sec. 5 of the act of March 3, 1887, the Tacoma Land Company had a vested right to the land, growing out of its purchase and deed from the Railroad Company of December, 1874, which became perfect on October 13, 1896, when the railroad selection was cancelled, and which was paramount to any right the plaintiff in error could acquire by her entry or settlement commencing in 1897.

DECISIONS OF LAND DEPARTMENT.

The Land Department has uniformly in this case, and by its decisions in other like cases, construed Sec. 5 of the act of March 3, 1887, and recognized the right of purchase given thereby as such a "superior right." We ask the court to briefly note the decisions of the Commissioner and Secretary on this point:

"In support of its entry, the Land Company submits a verified copy of a deed made by the Railroad Company December 30, 1874, conveying the land in controversy to the Land Company for a valuable consideration, and in all other essential particulars meets the requirements of office regulations in the matter of final proof." (Record, p. 18.)

"As shown, the land was at the date of the Land Company's purchase within the limits reserved for the Railroad Company under the withdrawal on general route of August 13, 1870, and of definite location of May 14, 1874. As further shown, such withdrawal and reservation continued until the final elimination of the railroad claim under authority of the Department's decision of July 13, 1896, in the Corliss case. Its purchase of the land from

the Railroad Company, upon such a showing as to the status of the land, did not, therefore, evince bad faith on the part of the Land Company." (Record, p. 18.)

"The provisions of Section 5 of the act of March 3, 1887, under which said Company has applied to purchase, are remedial in their character, giving to those qualified, as therein prescribed, the right to purchase from the Government lands which they had theretofore bought in good faith from the Railroad Company as part of its grant, and which for any reason were excepted from such grant." (Record, pp. 24-25.)

"It is also apparent that if the Tacoma Land Company is qualified to purchase the said land under the provisions of said act, its rights thereto are superior to those of Ramsay under her entry and settlement made long after the passage of said act (*Skinvik v. Longstreet, et al.*, 22 L. D. 32)." (Record, p. 23.)

It was also found and determined that the land in question

"ever since 1874 had been held by said corporation under the deed of conveyance from the Railroad Company, and by the terms of the remedial statute hereinbefore mentioned * * * said corporation, if otherwise qualified as therein specified, was specifically given the right to purchase said land." (Record, p. 24.)

"The testimony submitted by her (Ramsay) does not in any manner contradict or traverse the proof submitted by the Land Company touching its qualifications to purchase the land in question under the provisions of Section 5 of the act of March 3, 1887, *supra*, by reason of its alleged purchase of said land from the railroad company on December 30th, 1874." (Record, pp. 22, 23.)

And the Secretary of the Interior, closing his decision, says:

"There is nothing in the record to indicate bad faith on the part of the Tacoma Land Company, and as the proof submitted in support of its application to purchase the land in controversy appears to be otherwise substantially in conformity to the requirements of your office and the department, no error is apparent in your decision." (Record, p. 25.)

In *Tacoma Land Co. vs. N. P. R. R. Co.* (26 Land Dec., 503), the Secretary of the Interior, construing this same Sec. 5 of the act of March 3, 1887, said:

"Upon the passage of that act, the Land Company's prior ineffectual purchase from the Railroad Company, if *bona fide*, was converted into a lawful right to purchase from the United States; and knowing that the land was claimed by the Railroad Company under its grant, and having at least constructive notice of its sale to the Land Company, as shown by the recorded deed, Shrives (the homesteader) could not thereafter initiate any settlement right which would defeat the Land Company's right to purchase under the 5th section of the act."

And the Land Department in that case held that the Tacoma Land Company had a "superior right of purchase" under the act of 1887 over a homestead claimant; that said act "had given vitality and force to rights like those of the Tacoma Land Company asserted under purchase of lands claimed under railroad land grants," and that the Land Company's ineffectual purchase from the Railroad Company "was converted into a lawful right to purchase from the United States," as against which the homestead claimant, "knowing that the land was claimed by the Railroad Company under its grant, and having at

least constructive notice of its sale to the Land Company," could not initiate any *bona fide* settlement right.

In *U. S. vs. Winona R. R. Co.*, 165 U. S., 463, the intent of Congress to protect as *bona fide* purchasers all persons who have purchased land from a land grant company, believing they thereby acquired good title, but whose title failed, was recognized, and the court said:

"Congress had in view the protection of other parties than those already protected by general laws."

"Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest terms a *bona fide* purchaser, has nevertheless purchased in good faith from the railroad company. Our conclusion is that these acts operate to confirm the title of every purchaser from a railroad company of lands, certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing also that the lands were public lands in the statutory sense of the term and free from individual or other claims."

The act of 1896, referred to by the court in the case last cited, was the act of March 3, 1896 (29 Stat., 42), which reinforced and confirmed the rights of purchasers under the act of 1887, and provided that:

"No patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

And the U. S. Circuit Court of Appeals, in *Wagstaff vs. Collins,* 97 Fed., 3, 8, reviewing the acts of March 3, 1887, and March 3, 1896, held that the words "*bona fide* purchaser" as used in those acts

"Were not used by Congress in any technical sense, but were intended by Congress to comprehend *all persons* who had bought land from a railroad company, paid value therefor, acting at the time under an honest belief that they were acquiring a good title."

"We think it was within the power of the legislative branch of the government to confirm the title of the purchasers from the railway company to the land in controversy, and that the act of March 3, 1887, was adequate to accomplish that object."

This court in the case of *Gertgens vs. O'Connor,* 191 U. S., 242, construing Sec. 5 of the act of March 3, 1887, said:

"We have more than once held that the entire statute was remedial in its nature, and must be construed so as to carry out the intent of Congress and secure to the parties the intended relief. * * * As to those who had dealt with the railway company, its evident purpose was to secure to them the lands they had contracted for, in so far as it could be done without trespassing on the rights of settlers."

"The rulings of the Land Department have been along the line of a recognition of the fact that attempts in good faith by a party to obtain from a railroad company for

bona fide settlements lands believed to belong to it, or expected to be acquired by it, present cases which were intended to be included within the act of 1887, and entitled to its protection." Citing land cases.

"Section 5 gave to Ireland (the purchaser from the railway company) only a right to purchase this land from the government—a preferential right—paying to the government its price, no portion of which was to pass to the railway company, and gave him that preferential right because of his dealings with the company. He had sought to obtain title to this land from the company. He had made a contract by which, if the company acquired title, he could obtain that title; and Congress, by Section 5, simply provided that, having so acted in respect to this land, he should have a preferential right of purchase. The company neither gains nor loses. The government receives its price for the land, and is, therefore, fully protected, and Ireland receives that in respect to which he certainly has some equitable claim of consideration, a preferential right of purchase."

RAMSAY ACQUIRED NO VESTED RIGHT AGAINST THE GOVERNMENT.

The plaintiff in error acquired by her settlement or homestead entry of the land no vested right thereto as against the right of the government to otherwise dispose of it.

Menotti vs. Dillon, 167 U. S., 721.

This principle was recognized and enforced in the case of *N. P. R. R. Co. vs. Amaker*, 175 U. S., 564, where it was held that the right of purchase given by an act of Congress is one preferred and protected as against the ordinary right of qualified citizens to purchase or enter pub-

lic lands under the general land laws; that the true construction of the land laws is that a *specified right* given to a limited class to take by purchase *particular tracts* is *superior* to the general right of all citizens to purchase public lands; and that lands subject to such preferred right of purchase were "appropriated lands," and no longer to be considered public lands subject to the usual right of entry. And, in this case, the Land Department held that the Tacoma Land Company "was specifically given the right to purchase said land." (Record, p. 24.)

The 5th section of the act of March 3, 1887, recognized and provided for a class of claimants for lands of the character to which it applied, whose rights could not be affected by subsequent settlement of others on the land, even if there were no withdrawal. Lands affected with the conditions mentioned were appropriated by the terms of that section to this class of claimants. The right of purchase conferred by this act, thus absolute in its terms, was indivestable by one who went upon the land after 1887, whether before or after the railroad claim was cancelled, unless the railroad's grantee should lose by laches his prior right thus conferred.

Whatever may have been the possessory rights of plaintiff in error as against other claimants under the ordinary land laws, such rights could not avail against the right of Congress to confer the land upon other parties.

Gonzales vs. French, 164 U. S., 338, 345.

As was said in the case last cited, quoting from *Shepley vs. Cowan*, 91 U. S., 330: "The settlement, even when accompanied with an improvement of the property, did not confer upon the settler any right in the land *as against the*

United States, or impair in any respect the power of Congress to dispose of the land in any way it might deem proper."

This rule, which had long been applied to pre-emption claimants, was applied to a homestead claimant in *Norton vs. Evans*, 82 Fed. (C. C. A.), 804, 807, holding that a homestead entry creates no vested rights as against the United States, and does not interfere with the power of Congress even by subsequent legislation to dispose of the land, and certainly not by legislation prior to the inception of the alleged homestead right.

Wagstaff vs. Collins, 97 Fed., 3, 8.

Shiver vs. U. S., 159 U. S., 491.

RAMSAY WAS NOT A *BONA FIDE* SETTLER.

The plaintiff in error was not a settler upon the land "in good faith" within the meaning of the land laws and decisions. She had knowledge and was charged with notice:

Of the grant to the Railroad Company;

Of the reservation and withdrawal of the land by order of the Land Department for the benefit of the grant;

Of the sale and conveyance to the Land Company by deed of record;

Of the Land Company's right to purchase under the act of 1887;

Of its possession and conveyance to its grantees.

With such knowledge and notice, her attempt to enter the land as a homestead was not made in good faith, and was subject to the superior right of the Land Company and its grantees.

A settlement or entry made "in good faith" has been defined to be one made "in ignorance of any right or claim of a third party."

2 Am. & Eng. Ency. of Law, 1st ed., 444.

"By 'good faith,' as judicially interpreted, is meant a purchase made not merely for a consideration, but also without notice to the purchaser of an adverse claim to the property by others; for 'the taking an estate after notice of a prior right makes one a *mala fide* purchaser'."

Bracka vs. Fish, 23 Wash., 653, and cases cited.

Wood vs. Beach, 156 U. S., 551.

Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

The Commissioner, in his decision (Record, bottom p. 18), states the facts on this point as follows:

"It appears that her settlement and improvement were not only begun on the land June 1, 1897, subsequent to the date (February 24, 1897) of her entry, but long after said company had purchased the land from the Railroad Company."

And the Commissioner then quotes the ruling of the Land Department from *Holton vs. Rutledge*, 20 L. D., 227, as follows:

"A settlement claim acquired after the passage of the act of March 3, 1887, and subsequent to the sale of the land by the Railroad Company, will not defeat the right of the purchaser, or his transferee, to perfect title under the provisions of Section 5 of said act."

The record in this cause discloses that the plaintiff in error stands in no more favorable situation, and is no more a settler in good faith, than the attempted homesteader in the case of *Gertgens vs. O'Connor,* 191 U. S., 246, of whom this court said:

"It (the land involved) had been withdrawn from entry under the land laws, and that fact appeared on the records of the local land office. It had, in fact, been selected by the company, and that selection had not been cancelled. Ireland's contract of 1883 was of record in the office of the register of deeds of the county, and shown on the books of the company. The defendant applied for leave to enter the land as a homestead, and was denied such leave by the local land officers on the ground that it was within the twenty-mile indemnity limits of the railway company's grant, and had been selected by the company. He was charged with knowledge of the act of Congress giving a preferential right of purchase from the government in case the company's title should in any way fail. Notwithstanding all this, he remained upon the land and put his improvements on it, and now claims to be entitled to the rights of a *bona fide* settler. He does not come within the letter of the statute, nor does he come within the reach of any reasonable equities. He evidently took his chances on the possibility of the company's failing to obtain title and a subsequent failure of Ireland to insist upon his preferential right of purchase. He went upon the land with full knowledge of all the facts, which showed that he had no right to enter, speculating upon possibilities which have not been realized, and, having so speculated, he can not complain if he suffer the consequences which often attend the failure of a speculation."

The decision quoted appears to so completely fit the facts of this case, and settle the status of the plaintiff in error, as attempting to enter the land with notice of the prior rights of the Tacoma Land Company, and not in good faith, that no further argument or authority should be necessary.

PURCHASE BY TACOMA LAND COMPANY WAS NOT UNREASONABLY DELAYED.

The Tacoma Land Company did not unreasonably delay the exercise of its superior right to purchase the land. Its application to purchase was made in August, 1897, about ten months after the Railroad Company's listing and selection of the land was cancelled, on October 13, 1896. Upon this point the Commissioner said (Record, p. 18):

"As shown, the land was at the date of the Land Company's purchase within the limits reserved for the Railroad Company under the withdrawal on general route of August 13, 1870, and of definite location of May 14, 1874. As further shown, such withdrawal and reservation continued until the final elimination of the railroad claim under authority of the Department's decision of July 13, 1896, in the Corliss case. Its purchase of the land from the Railroad Company, upon such a showing as to the status of the land, did not, therefore, evince bad faith on the part of the Land Company."

After the passage of the act of March 3, 1887, the cancellation of the Railroad Company's right to any lands included in a pre-existing land grant would not restore such lands to the public domain, as against such purchaser.

The complaint in this cause does not allege, nor does the record disclose, any cancellation *at any time* of that

withdrawal and reservation, or any restoration of the land to the public domain; and such withdrawal and reservation, therefore, continued in force at least until the cancellation of the Railroad Company's listing and selection of the land on October 13, 1896. Until that date the land was in like condition with the land involved in the case of *Gertgens vs. O'Connor,* 191 U. S., 246:

"It had been withdrawn from entry under the land laws, and that fact appeared on the records of the local land office. It had, in fact, been selected by the company, and that selection had not been cancelled."

It has been uniformly held by the Land Department, and instructions were accordingly issued to the local land offices,that under Sec. 5 of the act of March 3, 1887,

"No entries would be allowed under said section until it should be finally determined by the Department that the land was excepted from the railroad grant."

Union Colony vs. Fulmele, 16 Land Dec., 276.

And that until the Land Department had "formally held that it did not pass to the State, no application would be received by the local officers."

Simpkins vs. Hays, 15 Land Dec., 293.

In *Tacoma Land Company vs. Shrives,* decided Sept. 20, 1895, the Commissioner, passing upon this same question, said:

"Nor can laches in the presentation of its claim be attributed to the Land Company, as further insisted by the adverse applicants, as it appears that within a reasonable

time after the promulgation of the Barden decision the company presented its application to purchase. Before that decision, when the land was held to be railroad land, such an application *would have been premature.*"

And in the same case, on appeal, the Department held that at no period prior to the rendition of the final ruling of the Department "was there any ground for the presentation of an application for the land, which under the decisions in force up to that time was held to be subject to the railroad grant."

In the case of *Nicholas Cochems,* 11 Land Dec., 629, it was held that an application to purchase under Sec. 5 of the act of March 3, 1887, would not be entertained until the Department had finally determined that the land was in fact excepted from the railroad grant; and, further, that

"By decision of this Department of June 23, 1888 (6 L. D., 816), lands of this class were *continued in reservation* 'pending adjudication by the courts, or until such time as the Department may deem it proper to remove the reservation'."

In *Hamblin vs. Western Land Co.,* 147 U. S., 531, it is held that a reservation of public lands from entry, made by the Department of the Interior as coming within the limits of a railroad grant, operates to withdraw the land from homestead entries, even if afterwards found not to come within such limits.

The land was appropriated and reserved from homestead settlement or entry by the withdrawal by the Land Department (Record, p. 18), and such withdrawal and reservation had the same force and effect to remove the land from public lands subject to pre-emption or homestead

under Secs. 2258 and 2289, U. S. R. S., as if the withdrawal had been made by a proclamation of the President (*Wood vs. Beach*, 156 U. S., 550), and after the amended homestead law went into effect in 1891 (Sec. 4, Act of March 3, 1891, 26 Stat, 1097) the land was not "unappropriated public land" within the meaning of that act as construed by the Land Department and the courts.

King vs. McAndrews, 104 Fed., 430, 437.

Barbour vs. Wilson, 23 Land Dec., 466.

Menotti vs. Dillon, 167 U. S., 721.

The land was, therefore, reserved and appropriated land within the meaning of the land laws at least until October, 1896; prior thereto and prior to its restoration to public entry it became subject to the right of the Tacoma Land Company to purchase under Sec. 5 of act of 1887; and thereafter, and within a reasonable time, the Land Company applied to purchase under that act.

The land laws allowed a pre-emptor twelve months after date of settlement in which to make his proof and payment. (Record, p. 16.)

In this connection we desire to call the attention of the court to the order of Secretary Vilas, as reported in 8 Land Dec., 27, 29, where he says:

"Inasmuch as the privilege conferred by this act is but a preferred right of purchase—a special pre-emption right—which would be perfected by the payment of the price of the land and the issue of cash entry certificate, as in pre-emption entries, it would seem eminently proper to

adopt the same method of procedure, so far as applicable, as is used in making final proofs in that class of cases."

In view of the liberal purposes and provisions of this act of 1887, a delay of ten months by the Land Company, within which to exercise the right of purchase given to it, was not an unreasonable delay in exercising this right given by a remedial law enacted for the protection of *bona fide* purchasers, and that act should be liberally construed for their protection, so as to effectually meet the beneficial end in view and prevent a failure of the remedy.

Potter's Dwarris on Statutes, p. 231.

The claim and argument of plaintiff in error that the Tacoma Land Company lost or waived its right to purchase the land under Sec. 5 of the act of March 3, 1887, by its delay in making application to purchase, is fully answered by the language of the Commissioner in his decision (Record, p. 20):

"Miss Ramsay's eighth and last assignment of error, that the Land Company had been guilty of laches in delaying its application for more than ten years after the passage of said act, is not sustained by the records, which disclose that its application was presented (August 27, 1897) within less than a year after the decision of the Department in the Corliss case, holding that the land was excepted from the railroad grant, had been declared final by this office on October 13, 1896."

TACOMA LAND COMPANY WAS QUALIFIED TO PURCHASE.

The only personal qualification of purchasers under Sec. 5 of the act of March 3, 1887, was that they should be

"citizens of the United States, or persons who have declared their intention to become such citizens." The Tacoma Land Company was a corporation organized under the laws of the State of Pennsylvania, and as such was a "citizen" of the United States within the meaning of Sec. 5 of the act of March 3, 1887.

The Commissioner in his decision in this case, Exhibit A, so held (Record, p. 19), and upon appeal therefrom the Secretary of the Interior sustained that decision, Exhibit B (Record, p. 23). This point was contested by plaintiff in error before the trial court, who sustained the decisions of the Land Department. The question should require no further argument, as it has long been the settled and uniform decision of the Land Department and of the courts in many cases.

Gasper vs. St. Louis Power Co., 22 Land Dec., 587.

Nevada Southern Ry. Co., 22 Land Dec., 1.

Miller vs. Tacoma Land Co., 29 Land Dec., 633.

Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

Minn. & St. L. Ry. Co. vs. Beckwith, 129 U. S., 28.

Charlotte R. R. Co. vs. Gibbes, 142 U. S., 391.

Shaw vs. Quincy Mining Co., 145 U. S., 444.

Smyth vs. Ames, 159 U. S., 466.

Pembina Mining Co. vs. Penn'a, 125 U. S., 181.

Santa Clara Co. vs. So. Pac. R. R. Co., 118 U. S., 396.

North Noonday Mining Co. vs. Orient Mining Co., 1 Fed. Rep., 522.

U. S. vs. Northwestern Express Co., 164 U. S., 686.

In the last case cited, the court held that "such corporations were within the purview of the words as used in the remedial act." The act of 1887 was a remedial act of like character to that discussed in the case cited; it was enacted that its citizens might "be made whole for the losses they might have sustained" by failure of their title to lands purchased from companies holding same (as then supposed) by grant from the United States; and the provisions of such remedial act should be liberally construed.

In the case of *Bishop Iron Co. vs. Hyde*, 66 Minn., 24, 31, which was affirmed by this court, 177 U. S., 281, the court, citing *Vance vs. Burbank*, 101 U. S., 519, as its authority, said:

"The competency of the defendant to comply with the requirements of the pre-emption act—his qualification as a pre-emptor—*was a question of fact*, peculiarly for the determination of the officers of the Land Department. It has repeatedly been held that the decision of these officers is conclusive on a question of fact, in the absence of fraud."

LAND COMPANY MADE DUE PROOF OF RIGHT TO PURCHASE.

That the Tacoma Land Company made full and satisfactory proofs of its right to purchase the land is clearly

settled by the findings and decisions of the Land Department. The Commissioner held that the proofs submitted by the company by the Railroad Company's deed to it "and in all other essential particulars meets the requirements of office regulations in the matter of final proof" (Record, p. 18); and the Secretary in his decision (Record, p. 21) says: "Upon consideration of the proof submitted by said company, and the protest and evidence submitted by Ramsay, the local officers on October 15, 1897, found said proof satisfactory and allowed the same of record, cash receipt No. 1304 being issued thereon."

The Land Company being qualified as a citizen to purchase under Sec. 5 of the act of March 3, 1887, and having made full and satisfactory proofs, its title acquired by such purchase must be sustained.

The Tacoma Land Company's right to purchase and hold the land was not restricted by another act of March 3, 1887 (24 Stat., 476).

It was claimed by plaintiff in error at the trial and is argued here that the right of the Land Company to purchase and hold the land was restricted by Sec. 3 of an act of March 3, 1887 (24 Stat., 476), which provides:

"That no corporation, other than those organized for the construction or operation of railways, canals, or turnpikes, shall acquire, hold, or own, more than 5,000 acres of land in any of the *Territories* of the United States; and no railroad, canal or turnpike corporation shall *hereafter* acquire, hold or own lands in any *Territory*, other than as may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted to it by act of Congress. But the prohibition of

this section shall not affect the title to any lands now lawfully held by any such corporation."

This provision of law, however, was not in force in 1897, when the Tacoma Land Company purchased this land; but, even if it were, there is nothing in this case to show that the Land Company was a corporation of the class referred to, or that it held or owned any quantity of land, other than the land involved herein (Record, p. 24), or that this land was not held for the purposes allowed by the terms of the act; and the provision refers to land in the *Territories*, and does not affect any lands in the *State* of Washington, and affects at most only the right to *thereafter* acquire, hold or own lands, and did not affect any lands then lawfully held by such corporation. This land was then, in 1887, and had been since 1874, "lawfully held" by the Tacoma Land Company under its deed from the Railroad Company (Record, p. 24), whose right to the land was then recognized by the United States to be good. There is no limitation specified in the Sec. 5, under which the right to purchase was claimed, as to the quantity of land that could be purchased under it. (Record, p. 25.)

Further than this, this provision of law, above quoted, was amended by the substitute act of March 2, 1897 (29 Stat., 618), in which the prohibitory clause above quoted is entirely omitted. (Record, p. 24.) So that this restrictive provision, if it ever had or could have any reference to or effect upon the Tacoma Land Co., was not in force when it applied to purchase the land in August, 1897, and it was so held by the decisions of the Land Department. (Record, p. 25.)

As stated by the State Supreme Court in its decision (Record, p. 59), the facts in this case bring the defendants

in error strictly within the letter and spirit of the act of March 3, 1887; the Land Company had a preference right of purchase, and exercised that right within a reasonable time; and the Land Department correctly construed the law in so holding. That construction of Sec. 5 of said act was the sole question for review by the court in this cause, and its application to the right of the Land Company to purchase the land eliminated any question, construction or decision as to the homestead right of plaintiff in error; and we respectfully submit that the judgment of the State Supreme Court should be affirmed.

STANTON WARBURTON,
E. R. YORK,
Attorneys for Defendants in Error,
421 Fidelity Building, Tacoma, Washington.

Supreme Court of the United States.

No. 138.—October Term, 1904.

Susan A. Ramsey, Plaintiff in Error,
vs.
The Tacoma Land Company and Philadelphia, Trust, Safe Deposit and Insurance Company and John C. Bullitt, Trustees of the Estate of Charles B. Wright, deceased.

In error to the Supreme Court of the State of Washington.

[January 30, 1905.]

This was a suit commenced in the Superior Court of Pierce County, Washington, by the plaintiff in error, praying that she be decreed to be the owner of the S.W. ¼ of the N.W. ¼ of section 3, township 20 north, range 2 east, in said county, and that the defendants be adjudged to hold the legal title in trust for her. A decree of the trial court in her favor was reversed by the Supreme Court of the State, and the cause dismissed. (31 Wash. 351.)

The essential facts, which are not disputed, are stated in the opinion of the Supreme Court. The land was within the primary limits of the grant to the Northern Pacific Railroad Company by joint resolution of Congress, of May 31, 1870. (16 Stat. 378.) The company filed its map of general route on August 13, 1870, and its map of definite location on May 14, 1874. The Land Department thereupon withdrew from sale and entry this with other tracts. On May 19, 1869, one W. C. Kincade made a pre-emption filing on the land, but had abandoned the filing and the land prior to the act of 1870. Subsequently to the filing of the map of definite location the tract was held by the company and considered by the Land Department to have passed to the company until the departmental decision of July 13, 1896, in *Corlis* v. *Railroad Company*, (23 L. D. 265, on review 26 L. D. 652,) which held that lands situated as this were excepted from the grant. In 1874 the railroad company, for value and in good faith, sold and conveyed the land to the Tacoma Land Company, a corporation created under the laws of Pennsylvania. Thereafter that company, for value, and in good faith, sold to the other defendants, who also acted in good faith. The several deeds representing these transactions were placed on record in the county where the tract is situated. On October 13, 1896, the Commissioner of the General Land Office cancelled the railroad company's list of the tract in question, on the basis of the decision in *Corlis* v. *Railroad Company*. On February 24, 1897, the

plaintiff filed in the local land office her application to enter the land as a homestead, which filing was accepted by the local officers, and in May of that year she went upon the land, and has there since remained, making improvements to the value of $1,200. In August, 1897, the land company filed its application to purchase the tract, under section 5 of the act of Congress of March 3, 1887. (24 Stat. 557.) A contest between the plaintiff and the land company was had in the department, which resulted in a decision in its favor, and to it a patent was issued.

Mr. Justice BREWER delivered the opinion of the Court.

Plaintiff in error presents but two questions which have not already been determined by this court. One is whether a State corporation is entitled to the benefit of section 5 of the act of 1887, which names as beneficiaries "citizens of the United States," or "persons who have declared their intentions to become such citizens." This can scarcely be considered a debatable question, for in *United States* v. *Northwestern Express Company*, 164 U. S. 686, similar language in the Indian Depredations Statute was adjudged broad enough to include a State corporation. No review of the authorities there considered and no restatement of the argument is necessary. Obviously, in a remedial statute like this, the term "citizens" is to be considered as including State corporations, unless there be something beyond the mere use of the word to indicate an intent on the part of Congress to exclude them.

The other question arises on the contention of the plaintiff, that the statute of 1887 is not curative but simply permissive; that it does not attempt to confirm the title of the purchaser from the railroad company, but simply gives him the privilege of purchasing from the Government at the ordinary price. It is urged that it cannot be presumed that Congress intended that the land should be held indefinitely waiting for the election of the purchaser, and that the privilege must be exercised at once or considered as abandoned. It is said that the land company did not attempt to exercise the privilege immediately after the passage of the act, but waited for more than ten years. Obviously the statute is not a curative one, confirms no title, but simply grants a privilege. We shall assume that that privilege is not one continuing indefinitely, that the land is not held free from entry until the purchaser from the railroad company has formally refused to purchase, and that he must act within a reasonable time. Nevertheless, we are of opinion that the action of the Land Department must be sustained. It is true that the land company did not proceed immediately after the passage of the act of 1887, but until 1896 both the railroad company and the Land Department assumed that the land was already the property of the land company by its purchase from the railroad company. While all parties considered the full equitable title as vested in the land

company, there was no duty cast upon it of securing a further title by purchase from the Government. Only after the decision in the Corlis case in 1896, and on October 13 of that year, was the land stricken from the railroad company's list. Within ten months thereafter the land company made its application. Now, whether it acted with reasonable promptness was a question primarily for the consideration of the Land Department. That Department had before it the application of the plaintiff to enter the land under the general land laws, and that of the land company to purchase it under the act of 1887; and after a full consideration it decided in favor of the land company, a decision which, in effect, determined that the company had acted with all necessary promptness and was entitled to the benefit of the statute. Of course, the privilege granted by the statute would be of little or no avail if it had to be exercised on the very day. Some time must be allowed for acquiring knowledge of the situation and determining the course of action. The plaintiff was as fully charged with knowledge of this act of 1887 as the land company. Upon the records of the county were the deeds from the railroad to the land company and from the latter to its grantees. So she acted with knowledge both of the law and the facts, and is not in a position now to complain of the action of the Land Department. We are not justified in setting aside the decision of the Land Department and holding that it erred in awarding to the land company the privilege which the statute, without any express limitation of time, gives to it.

We see no error in the record, and the judgment of the Supreme Court of Washington is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.